

1 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised
2 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may
3 be granted, or that seek monetary relief from a defendant who is immune from such relief.
4 28 U.S.C. § 1915A(b)(1), (2).

5 A pleading must contain a “short and plain statement of the claim *showing* that the
6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
7 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
8 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
9 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
10 statements, do not suffice.” Id.

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
12 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
13 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
14 that allows the court to draw the reasonable inference that the defendant is liable for the
15 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
16 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
17 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
18 allegations may be consistent with a constitutional claim, a court must assess whether there
19 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

20 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
21 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, No. 07-17265, 2010 WL
22 2947323, at *3 (9th Cir. Jul. 29, 2010). A “complaint [filed by a *pro se* prisoner] ‘must be
23 held to less stringent standards than formal pleadings drafted by lawyers.’” Id. (quoting
24 Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*)).

25 **II. First Amended Complaint**

26 In his one-count First Amended Complaint, Plaintiff sues Detention Officers Bergman
27 and Dennison, and Unknown Others. Plaintiff claims that his Eighth and Fourteenth
28 Amendment rights were violated when Defendant Bergman refused to loosen Plaintiff’s

1 handcuffs, which Plaintiff was required to wear for 9-12 hours. Plaintiff alleges that the
2 handcuffs had chipped paint and jagged edges that cut into his skin. Plaintiff alleges that as
3 a result of Defendant Bergman's refusal to loosen the handcuffs and the cuts that Plaintiff
4 sustained, Plaintiff contracted methicillin-resistant staphylococcus aureus (MRSA).

5 Plaintiff seeks money damages and injunctive relief.

6 **III. Failure to State a Claim**

7 To state a valid claim under § 1983, plaintiffs must allege that they suffered a specific
8 injury as a result of specific conduct of a defendant and show an affirmative link between the
9 injury and the conduct of that defendant. See Rizzo v. Goode, 423 U.S. 362, 371-72, 377
10 (1976). Plaintiff has not made any allegations against Defendant Dennison or the Unknown
11 Defendants. Plaintiff has therefore failed to state a claim against these Defendants and they
12 will be dismissed.

13 **IV. Claims for Which an Answer Will be Required**

14 Liberally construed, Plaintiff's allegations against Defendant Bergman adequately
15 state an Eighth and Fourteenth Amendment claim and the Court will require Defendant
16 Bergman to answer the First Amended Complaint.

17 **V. Warnings**

18 **A. Release**

19 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.
20 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay
21 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result
22 in dismissal of this action.

23 **B. Address Changes**

24 Plaintiff must file and serve a notice of a change of address in accordance with Rule
25 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
26 relief with a notice of change of address. Failure to comply may result in dismissal of this
27 action.

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1 **C. Copies**

2 Plaintiff must serve Defendant, or counsel if an appearance has been entered, a copy
3 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate
4 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit
5 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply
6 may result in the filing being stricken without further notice to Plaintiff.

7 **D. Possible Dismissal**

8 If Plaintiff fails to timely comply with every provision of this Order, including these
9 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
10 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
11 comply with any order of the Court).

12 **IT IS ORDERED:**

- 13 (1) Defendants Dennison and Unknown Others are **dismissed** without prejudice.
- 14 (2) Defendant Bergman must answer the First Amended Complaint.
- 15 (3) The Clerk of Court must send Plaintiff a service packet including the First
16 Amended Complaint (Doc. 8), this Order, and both summons and request for waiver forms
17 for Defendant Bergman.
- 18 (3) Plaintiff must complete and return the service packet to the Clerk of Court
19 within 21 days of the date of filing of this Order. The United States Marshal will not provide
20 service of process if Plaintiff fails to comply with this Order.
- 21 (4) If Plaintiff does not either obtain a waiver of service of the summons or
22 complete service of the Summons and First Amended Complaint on Defendant within 120
23 days of the filing of the Complaint or within 60 days of the filing of this Order, whichever
24 is later, the action may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(I).
- 25 (5) The United States Marshal must retain the Summons, a copy of the First
26 Amended Complaint, and a copy of this Order for future use.
- 27 (6) The United States Marshal must notify Defendant of the commencement of this
28 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal

1 Rules of Civil Procedure. The notice to Defendant must include a copy of this Order. The
2 Marshal must immediately file requests for waivers that were returned as undeliverable and
3 waivers of service of the summons. If a waiver of service of summons is not returned by
4 Defendant within 30 days from the date the request for waiver was sent by the Marshal, the
5 Marshal must:

6 (a) personally serve copies of the Summons, First Amended Complaint, and
7 this Order upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil
8 Procedure; and

9 (b) within 10 days after personal service is effected, file the return of service
10 for Defendant, along with evidence of the attempt to secure a waiver of service of the
11 summons and of the costs subsequently incurred in effecting service upon Defendant.
12 The costs of service must be enumerated on the return of service form (USM-285) and
13 must include the costs incurred by the Marshal for photocopying additional copies of
14 the Summons, First Amended Complaint, or this Order and for preparing new process
15 receipt and return forms (USM-285), if required. Costs of service will be taxed against
16 the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil
17 Procedure, unless otherwise ordered by the Court.

18 (7) **If Defendant agrees to waive service of the Summons and First Amended**
19 **Complaint, Defendant must return the signed waiver forms to the United States**
20 **Marshal, not the Plaintiff.**

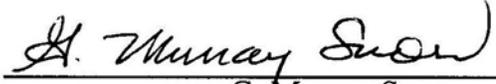
21 (8) Defendant must answer the First Amended Complaint or otherwise respond by
22 appropriate motion within the time provided by the applicable provisions of Rule 12(a) of
23 the Federal Rules of Civil Procedure.

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(9) This matter is referred to Magistrate Judge Edward C. Voss pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized under 28 U.S.C. § 636(b)(1).

DATED this 10th day of November, 2010.



G. Murray Snow
United States District Judge