UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEO MUHAMMAD,

Plaintiff,

v.

FELICIA PONCE,

Defendant.

Case No. CV 17-3037 DOC(JC)

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

I. BACKGROUND AND SUMMARY

On April 21, 2017, Leo Muhammad ("plaintiff") – who is an inmate at the Bureau of Prisons ("BOP") Federal Correctional Institution, Terminal Island, is proceeding without a lawyer (*i.e.*, "*pro se*"), and has been granted leave to proceed *in forma pauperis* – formally filed what has been liberally construed to be a Complaint ("Complaint" or "Comp.") with attached exhibits ("Comp. Ex.") against a single defendant – Felicia Ponce ("Ponce" or "defendant").[1] The Complaint appears to be predicated on the Free Exercise Clause of the First Amendment, the Religious Land Use and Institutionalized Persons Act of 2000, 42 U.S.C.

[1]Because the Complaint and exhibits are not sequentially numbered, the Court has used the numbering from its official Case Management/Electronic Case Filing (CM/ECF) system.

§§ 2000cc et seq. ("RLUIPA"), and the Religious Freedom Restoration Act of 1993, 42 U.S.C. §§ 2000bb et seq. ("RFRA"). (Comp. at 1). Plaintiff seeks only injunctive relief. (Comp. at 6).

As the Complaint is deficient in multiple respects, including those detailed below, it is dismissed with leave to amend.

II. THE SCREENING REQUIREMENT

As plaintiff is a prisoner proceeding *in forma pauperis* on a complaint against a governmental defendant, the Court must screen the Complaint, and is required to dismiss the case at any time it concludes the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A; 42 U.S.C. § 1997e(c).

When screening a complaint to determine whether it states any claim that is viable (*i.e.*, capable of succeeding), the Court applies the same standard as it would when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015) (citation omitted). Rule 12(b)(6), in turn, is read in conjunction with Rule 8(a) of the Federal Rules of Civil Procedure ("Rule 8"). Zixiang Li v. Kerry, 710 F.3d 995, 998-99 (9th Cir. 2013). Under Rule 8, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While Rule 8 does not require detailed factual allegations, at a minimum a complaint must allege enough specific facts to provide *both* "fair notice" of the particular claim being asserted *and* "the grounds upon which [that claim] rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007) (citation and quotation marks omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (Rule 8 pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation") (citing id. at 555).

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In addition, under Rule 10 of the Federal Rules of Civil Procedure ("Rule 10"), a complaint, among other things, must state a party's claims in sequentially "numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b).

Thus, to avoid dismissal, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) (citations and quotation marks omitted). A claim is "plausible" when the facts alleged in the complaint would support a reasonable inference that the plaintiff is entitled to relief from a specific defendant for specific misconduct. Iqbal, 556 U.S. at 678 (citation omitted). Allegations that are "merely consistent with" a defendant's liability, or reflect only "the mere possibility of misconduct" do not "*show[]* that the pleader is entitled to relief" (as required by Fed. R. Civ. P. 8(a)(2)), and thus are insufficient to state a claim that is "plausible on its face." Iqbal, 556 U.S. at 678-79 (citations and quotation marks omitted). At this preliminary stage, "well-pleaded factual allegations" in a complaint are assumed true, while "[t]hreadbare recitals of the elements of a cause of action" and "legal conclusion[s] couched as a factual allegation" are not. Id. (citation and quotation marks omitted); Jackson v. Barnes, 749 F.3d 755, 763 (9th Cir. 2014) ("mere legal conclusions 'are not entitled to the assumption of truth'") (quoting id.), cert. denied, 135 S. Ct. 980 (2015). In addition, the Court is "not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint," Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998) (citation omitted), and "need not [] accept as true allegations that contradict matters properly subject to judicial notice or by exhibit," Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), amended on denial of reh'g, 275 F.3d 1187 (9th Cir. 2001) (citation omitted).

Pro se complaints are interpreted liberally to give plaintiffs "the benefit of any doubt." Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and

internal quotation marks omitted). If a *pro se* complaint is dismissed because it does not state a claim, the court must freely grant "leave to amend" (that is, give the plaintiff a chance to file a new, corrected complaint) if it is "at all possible" that the plaintiff could fix the identified pleading errors by alleging different or new facts. Cafasso v. General Dynamics C4 Systems, Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (citation omitted); Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc) (citations and internal quotation marks omitted).

III. THE COMPLAINT

Very liberally construed, the salient, non-conclusory allegations in the Complaint appear to reflect the following material facts:

Plaintiff is a follower of the "Nation of Islam" ("NOI") religion. (Comp. at 1). On February 3, 2016, plaintiff submitted an inmate request to Associate Warden Flint which asked for a "Public Commemorative Fast" to celebrate "Saviours' Day" (*i.e.*, "the Birth of The Mahdi, Master Fard Muhammad" which occurs each year on February 26th). (Comp. at 1-2). "[P]rior practice of the Chaplaincy has allowed observation of Saviours' Day with the Commemorative Fast an[d] a Ceremonial meal thereafter." (Comp. at 2).

On February 7, 2016, Chaplain W. Son denied plaintiff's request "claiming the (NOI) 'Public Fast' day was on 16th October, each year." (Comp. at 2). In addition, Chaplain Son "scheduled the Ceremonial meal for [February 25, 2016], without consulting [plaintiff] or any (NOI) Adherent." (Comp. at 2). "[T]he Thursday scheduling for the 25th day of February 2016 ha[s] no religious/ ecclesiastical significance to [plaintiff] or any (NOI) Adherent." (Comp. at 2).

Plaintiff seeks only injunctive relief, requesting that defendant be ordered "to observe Saviours' Day, each year according to [plaintiff's] spiritual precepts[,] [t]hereby observing the day" on February 26th of each year "and at the prescribed time of eating." (Comp. at 6).

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IV. PERTINENT LAW

A. First Amendment – Free Exercise of Religion

Prisoners "retain protections afforded by the First Amendment" including the right to "the free exercise of religion." O'Lone v. Estate of Shabazz, 482 U.S. 342, 348 (1987) (citations omitted), superseded by statute on other grounds, 42 U.S.C. §§ 2000cc, et seq. However, as a consequence of incarceration, a prisoner's First Amendment rights are necessarily "more limited in scope than the constitutional rights held by individuals in society at large." Shaw v. Murphy, 532 U.S. 223, 229 (2001). An inmate retains only "those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." Pell v. Procunier, 417 U.S. 817, 822 (1974).

To state a First Amendment free exercise claim, an inmate must allege that a prison official's actions (i) "substantially burden[ed]" the inmate's exercise of a sincerely held religious belief; and (ii) did so in an unreasonable manner – *i.e.*, the official's actions were not "rationally related to legitimate penological interests." See O'Lone, 482 U.S. at 348-50; Jones v. Williams, 791 F.3d 1023, 1031, 1033 (9th Cir. 2015) (citation omitted); Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008) (citations omitted). "[G]overnment action places a substantial burden on an individual's right to free exercise of religion when it tends to coerce the individual to forego [his or] her sincerely held religious beliefs or to engage in conduct that violates those beliefs." Jones, 791 F.3d at 1031-33 (a "substantial burden" must be "more than an inconvenience on religious exercise") (citations omitted). It is plaintiff's burden to plausibly show that an official did not act in a reasonable manner under the circumstances. See, e.g., Overton v. Bazzetta, 539 U.S. 126, 132 (2003) ("The burden [] is not on the State to prove the validity of prison regulations but on the prisoner to disprove it.") (citations omitted).

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B. RLUIPA

RLUIPA prohibits state and local governments from "taking any action that substantially burdens the religious exercise of an institutionalized person unless the government demonstrates that the action constitutes the least restrictive means of furthering a compelling governmental interest." Holt v. Hobbs, 135 S. Ct. 853, 859 (2015). RLUIPA provides more "expansive protection" of prisoners' religious exercise than is available under the First Amendment. Id. at 859-60; Shakur, 514 F.3d at 888 (citation omitted)); see also 42 U.S.C.A. § 2000cc-3 (RLUIPA "[to] be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of [RLUIPA] and the Constitution.") (citation omitted).

To state a claim under RLUIPA, a prisoner/plaintiff has the initial burden to plausibly allege that some government action imposed a "substantial burden" on the plaintiff's "religious exercise." 42 U.S.C.A. § 2000cc-1; Hartmann v. California Department of Corrections and Rehabilitation, 707 F.3d 1114, 1125 (9th Cir. 2013) ("To survive a motion to dismiss on [a] RLUIPA claim, plaintiffs must allege facts plausibly showing that the challenged policy and the practices it engenders impose a substantial burden on the exercise of their religious beliefs.") (citation omitted). To merit protection under RLUIPA, a plaintiff's religious exercise need not be "compelled by, or central to, a system of religious belief," 42 U.S.C.A. § 2000cc-5(7)(A), nor need it be "shared by all of the members of a religious sect." Holt, 135 S. Ct. at 861-63 (citation and internal quotation marks omitted). It does, however, need to be "sincerely based on a religious belief and not some other motivation[.]" Holt, 135 S. Ct. at 862 (citing Burwell v. Hobby Lobby Stores, Inc. ("Hobby Lobby"), 134 S. Ct. 2751, 2774 n.28 (2014)).

Government action imposes a substantial burden on a religious exercise for purposes of RLUIPA essentially if it compels a prisoner to choose between being punished and "seriously violat[ing]" his sincerely-held religious beliefs. Id. (citing

Hobby Lobby, 134 S. Ct. at 2775); see also Shakur, 514 F.3d at 888 ("[A] burden [on religious exercise] is substantial under RLUIPA when the state 'denies [an important benefit] because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs.'") (citations and internal quotation marks omitted); Oklevueha Native American Church of Hawaii, Inc. v. Lynch, 828 F.3d 1012, 1017 (9th Cir.) (government policy substantially burdens religious exercise if it forces prisoner to "choose between 'engag[ing] in conduct that seriously violates [his] religious beliefs' or 'fac[ing] serious disciplinary action'") (citing Holt, 135 S. Ct. at 862) (alterations in original; internal quotation marks omitted), cert. denied, 137 S. Ct. 510 (2016).

If the plaintiff makes the required showing, the burden then shifts to the defendant to establish that, as applied to the particular plaintiff, the challenged government action/prison policy actually furthered "a compelling governmental interest," and that the defendant used the "least restrictive means" to further the interest. 42 U.S.C.A. § 2000cc-1(a); see Holt, 135 S. Ct. at 863 (citing id.).

C. RFRA

RFRA is intended "to provide greater protection for religious exercise than is available under the First Amendment." Holt, 135 S. Ct. at 859-60 (citing Hobby Lobby, 134 S. Ct. at 2760-61). RFRA essentially provides that the government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," unless the government "demonstrates that application of the burden to the person – (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." Holt, 135 S. Ct. at 860 (citation and internal quotation marks omitted); 42 U.S.C. §§ 2000bb-1(a), (b), found unconstitutional on other grounds, City of Boerne v. Flores, 521 U.S. 507 (1997).

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To state a claim under RFRA, a plaintiff has the initial burden to allege that some government action "substantially burdened" plaintiff's "exercise of religion." Navajo Nation v. United States Forest Service, 535 F.3d 1058, 1068 (9th Cir. 2008) (en banc) (citing 42 U.S.C. § 2000bb-1(a)), cert. denied, 556 U.S. 1281 (2009). RFRA protects "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." Hobby Lobby, 134 S. Ct. at 2761-62 (citing 42 U.S.C. § 2000bb-2(4) ("importing" definition of "religious exercise" from RLUIPA, 42 U.S.C. § 2000cc-5(7)(A)). To be protected, a religious exercise must, at a minimum, be "sincerely based on a religious belief and not some other motivation[.]" Holt, 135 S. Ct. at 862 (citing Hobby Lobby, 134 S. Ct. at 2774 n.28 ("pretextual assertion of a religious belief . . . for financial reasons" not "sincere")). A religious exercise is protected even if it is "idiosyncratic," and whether or not it is shared by all members of the religion. Holt, 135 S. Ct. at 862 (citation and internal quotation marks omitted).

A "substantial burden" is imposed on a religious exercise for purposes of RFRA only if "individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit [] or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions []." Navajo Nation, 535 F.3d at 1069-70 (citations omitted).

If a plaintiff makes the required initial showing, the burden then shifts to the defendant to prove that, as applied to the particular plaintiff, the challenged government action is in furtherance of "a compelling governmental interest" and is implemented by "the least restrictive means." Navajo Nation, 535 F.3d at 1068 (quoting 42 U.S.C. § 2000bb-1(b)). "If the government cannot so prove, the court must find a RFRA violation." Id. An individual federal government official may not be held personally liable under RFRA unless he or she "personally" imposed a substantial burden on the exercise of a sincerely-held religious belief, or, if a supervisor, unless the failure to supervise subordinates was "highly likely given the

circumstances of the case, to give rise to a constitutional violation." See Patel v. Bureau of Prisons, 125 F. Supp. 3d 44, 56 (D.D.C. 2015) (internal quotation marks omitted).

V. DISCUSSION

Here, the Complaint is deficient in at least the following respects:

First, the Complaint violates Rule 10(b) because plaintiff's allegations are not in sequentially "numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b).

Second, the Complaint does not state a viable claim against defendant Ponce because plaintiff does not plausibly allege that defendant Ponce engaged in any identifiable conduct at all, much less any act that caused a substantial burden to be placed on plaintiff's religious exercise.

Third, plaintiff – a federal inmate suing a federal official – fails to state a RLUIPA claim because RLUIPA does not apply to the alleged federal government action. See generally Navajo Nation, 535 F.3d at 1077 ("Subject to two exceptions not relevant here,[2] RLUIPA does not apply to a federal government action. . . .") (citing 42 U.S.C. § 2000cc-5(4)); Multi-Denominational Ministry of Cannabis and Rastafar, Inc. v. Holder, 265 Fed. Appx. 817, 819 (9th Cir. 2010) (RLUIPA "does not apply to actions taken by the federal defendants.") (citation omitted).

Fourth, the Complaint fails to state a viable First Amendment free exercise claim. Construed very liberally, the Complaint appears to assert that plaintiff's religious exercise was burdened because he was denied a "public" "Commemorative Fast" to observe Saviours' Day on February 26th. (Comp. at 1-2). Assuming, for purposes of analysis, that plaintiff's sincere religious belief required him to observe Saviours' Day in such a manner, the exhibits plaintiff

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[2]Sections 2000cc-2(b) (burden of persuasion) and 2000cc-3 (rules of construction) apply to the federal government. Navajo Nation, 535 F.3d at 1077 n.21 (citing 42 U.S.C. § 2000cc–5(4)(B)).

attached to the Complaint suggest that plaintiff ultimately suffered no burden on that exercise since it appears that plaintiff's request was timely granted. (Comp. Ex. at 27 [March 10, 2016 response to Request for Administrative Remedy stating "A review into this matter revealed that the commemorative fast was accommodated for you and several other members of the Nation of Islam on Friday, February 26, 2016. The Food Service provided missed meals to participants."]).

Plaintiff appears to complain that his religious exercise was also burdened because a ceremonial meal was scheduled for February 25, 2016, instead of on February 26, 2016, following the Saviours' Day public fast. (Comp. at 2). Plaintiff has not plausibly shown (in the manner required by Rule 8) that his allegedly sincerely held religious belief required him to participate in a ceremonial meal on February 26th in addition to a public fast in order to observe Saviours' Day each year. For example, "The Muhammad Mosque Provisional Constitution" which plaintiff attached as an exhibit to the Complaint provides that "Saviours' Day" is to occur "on or about the 7th of October of each year" and that an "Annual Commemorative Fast[] . . . by all Muslims shall take place commencing sundown on the 25th of February and ending at sundown on the 26th of February of each year[,]" but does not mandate, or even mention, a ceremonial meal. (Comp. Ex. at 40). In addition, the Complaint alleges that a ceremonial meal had previously been held following the Saviours' Day public fast, and that scheduling the ceremonial meal in 2016 on February 25th "[had] no religious/ecclesiastical significance to [plaintiff] or any other [Nation of Islam] adherent," but does not plausibly suggest that plaintiff personally, sincerely believed that his religion required such a ceremonial meal to be held on a specific date.

Assuming, for purposes of analysis, that plaintiff did hold such a sincere religious belief, the Complaint does not plausibly allege that any government official placed a "substantial burden" on plaintiff's exercise thereof at any relevant time. Plaintiff was asked to provide further information so the Chaplain could

determine whether a religious exception might allow for a ceremonial meal to be held during the time frame requested by plaintiff (*i.e.*, "when Food Service staff [were] unavailable[]") but plaintiff "[had] not submitted the requested information" on the form the Chaplain had provided. (Comp. Ex. at 27). Cf., e.g., Resnick v. Adams, 348 F.3d 763, 765, 768 n.6 (9th Cir. 2003) (requiring federal inmate to submit standardized form application with "written statement articulating the religious motivation for" seeking religious accommodation "is by no stretch a 'substantial' burden" on religious exercise for purposes of RFRA).

Moreover, the Court may grant prospective injunctive relief in a civil action regarding prison conditions only to the extent "necessary to correct the violation of the Federal right of [the] particular plaintiff. . . ." 18 U.S.C. § 3626(a)(1)(A). Here, however, the Complaint does not plausibly allege any affirmative action by a government official that would coerce plaintiff into foregoing his sincerely held religious beliefs (relating to Saviours' day or otherwise) or to engage in any conduct that violates that belief at any point in the future which could be remedied by equitable relief.

Fifth, since the Complaint does not plausibly allege a sufficient burden on plaintiff's religious exercise to support a claim under the First Amendment, the Complaint also fails to state a viable RFRA claim. See, e.g., Navajo Nation, 535 F.3d 1058, at 1070 (citations omitted) ("Any burden imposed on the exercise of religion short of that [proscribed by the First Amendment Free Exercise Clause] is not a 'substantial burden' within the meaning of RFRA.").

Finally, the remaining allegations in the Complaint amount to little more than unintelligible stream-of-consciousness rambling with immaterial background information and conclusory legal assertions – which are insufficient under Rule 8 to state a viable claim for relief. See Iqbal, 556 U.S. at 680-84 (conclusory allegations in complaint which amount to nothing more than a "formulaic recitation of the elements" insufficient under Rule 8) (citations omitted); see also Knapp v. Hogan,

738 F.3d 1106, 1109 & n.1 (9th Cir. 2013) (violations of Rule 8 "warrant dismissal" of complaint) (citations omitted), cert. denied, 135 S. Ct. 57 (2014); Davis v. Ruby Foods, Inc., 269 F.3d 818, 820 (7th Cir. 2001) ("The dismissal of a complaint on the ground that it is unintelligible is unexceptionable."); cf. Cafasso, 637 F.3d at 1059 ("pleading that was needlessly long, or a complaint that was highly repetitious, or confused, or consisted of incomprehensible rambling" violates pleading requirements under Federal Rules of Civil Procedure) (citation and internal quotation marks omitted); Stewart v. Ryan, 2010 WL 1729117, *2 (D. Ariz. Apr. 27, 2010) ("It is not the responsibility of the Court to review a rambling narrative in an attempt to determine the number and nature of a plaintiff's claims."). To the extent plaintiff suggests that he has stated a claim merely by referencing the Complaint exhibits, he is incorrect. It is not the Court's responsibility to sift through plaintiff's multiple exhibits in an attempt to glean whether plaintiff has an adequate basis upon which to state any other claim for relief. Cf. Gordon v. Virtumundo, Inc., 575 F.3d 1040, 1066 (9th Cir. 2009) ("[j]udges are not like pigs, hunting for truffles buried in briefs") (citation omitted); Garst v. Lockheed-Martin Corp., 328 F.3d 374, 378 (7th Cir.) ("Rule 8(a) requires parties to make their pleadings straightforward, so that judges and adverse parties need not try to fish a gold coin from a bucket of mud.") (cited with approval in Knapp, 738 F.3d at 1111), cert. denied, 540 U.S. 968 (2003).

VI. ORDERS

In light of the foregoing, IT IS HEREBY ORDERED:

1. The Complaint is dismissed with leave to amend. If plaintiff intends to pursue this matter, he shall file a First Amended Complaint within twenty (20)

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days of the date of this Order which cures the pleading defects set forth herein.[3] The Clerk is directed to provide plaintiff with a Central District of California Civil Rights Complaint Form, CV-66, to facilitate plaintiff's filing of a First Amended Complaint if he elects to proceed in that fashion.

2. In the event plaintiff elects not to proceed with this action, he shall sign and return the attached Notice of Dismissal by the foregoing deadline which will result in the voluntary dismissal of this action without prejudice.

3. Plaintiff is cautioned that, absent further order of the Court, plaintiff's failure timely to file a First Amended Complaint or Notice of Dismissal, may be deemed plaintiff's admission that amendment is futile, and may result in the dismissal of this action with or without prejudice on the grounds set forth above, on the ground that amendment is futile, for failure diligently to prosecute and/or for failure to comply with the Court's Order.

IT IS SO ORDERED.

DATED: July 26, 2017

David O. Carter

HONORABLE DAVID O. CARTER
UNITED STATES DISTRICT JUDGE

Attachments

[3]Any First Amended Complaint must: (a) be labeled "First Amended Complaint"; (b) be complete in and of itself and not refer in any manner to the original Complaint – *i.e.*, it must include all claims on which plaintiff seeks to proceed (Local Rule 15-2); (c) contain a "short and plain" statement of the claim(s) for relief (Fed. R. Civ. P. 8(a)); (d) make each allegation "simple, concise and direct" (Fed. R. Civ. P. 8(d)(1)); (e) present allegations in sequentially numbered paragraphs, "each limited as far as practicable to a single set of circumstances" (Fed. R. Civ. P. 10(b)); (f) state each claim founded on a separate transaction or occurrence in a separate count as needed for clarity (Fed. R. Civ. P. 10(b)); (g) set forth clearly the sequence of events giving rise to the claim(s) for relief; (h) allege specifically what each defendant did and how that defendant's conduct specifically violated plaintiff's civil rights; and (i) not change the nature of this suit by adding new, unrelated claims or defendants, cf. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (civil rights plaintiff may not file "buckshot" complaints – *i.e.*, a pleading that alleges unrelated violations against different defendants).