UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANTHONY EUGENE VALDIVIA,

Plaintiff,

v.

CYNTHIA Y. TAMPKINS, et al.,

Defendants.

Case No. EDCV 16-1975 JFW(JC)

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

I. BACKGROUND AND SUMMARY

On September 15, 2016, Anthony Eugene Valdivia ("plaintiff"), who is a prisoner, is proceeding without a lawyer (*i.e.*, "*pro se*"), and has been granted leave to proceed *in forma pauperis*, filed a Civil Rights Complaint ("Complaint")[1] pursuant to 42 U.S.C. § 1983 ("Section 1983") against fourteen (14) defendants connected with the California Rehabilitation Center, Norco ("CRC") where plaintiff is currently housed: (1) Warden Cynthia Y. Tampkins; (2) Lieutenant G. Lares; (3)

[1]The Complaint includes multiple exhibits ("Exhibits" or "Ex."). Since the Complaint is not sequentially numbered, the Court refers to pages in the order in which they appear and according to the page numbers used on the electronic version of the Complaint which appears on the Court's docket (CM/ECF) as Docket No. 1.

Lieutenant Y. Keehmer; (4) Captain C. Abarca ; (5) Lieutenant B. R. Davis; (6) Associate Warden R. Bandholtz; (7) Correctional Counselor A. Gonzalez; (8) ISU Sergeant F. Halton; (9) ISU Officer G. Moeller; (10) AGPA Appeals D. Moore; (11) Appeals Coordinator P. Serna; (12) ISU Sergeant A. Cornejo; (13) ISU Officer A. Carrion; and an unnamed individual identified only as (14) "John Doe" (collectively "defendants"). (Complaint at 3-7 [listing defendants except John Doe]; Ex. A at 16 [referencing John Doe]). Plaintiff sues defendants in their individual capacities only and seeks monetary relief. (Complaint at 3-7, 9).

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 civil rights complaint against governmental defendants, 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).

In determining whether a complaint fails to state a viable claim for purposes of screening, the Court applies the same pleading standard from Rule 8 of the Federal Rules of Civil Procedure ("Rule 8") as it would when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). 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 "fair notice" of *both* 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). In addition, under Rule 10 of the Federal Rules of Civil Procedure ("Rule 10"), a complaint, among other things, must (1) state the names of "all the parties" in the caption; (2) state a party's claims in *sequentially* "numbered paragraphs, each limited as far as practicable to a single set of circumstances"; and (3) state "each claim founded on a separate transaction or occurrence . . . in a separate count" where, like here, "doing so would promote clarity. . . ." Fed. R. Civ. P. 10(a), (b).

Thus, to survive screening, a civil rights 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); see also Gauvin v. Trombatore, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988) (complaint "must allege the basis of [plaintiff's] claim against *each* defendant" to satisfy Rule 8 pleading requirements) (emphasis added); Chappell v. Newbarth, 2009 WL 1211372, *3 (E.D. Cal. May 1, 2009) ("[A] complaint must put each defendant on notice of Plaintiff's claims against him or her, and their factual basis.") (citing Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004)). 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 the screening 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). 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 in civil rights cases 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 for failure to 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 correct the pleading errors in the complaint by alleging "other 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) (citation and quotation marks omitted).

III. PERTINENT LAW

A. Section 1983 Claims

To state a viable claim under Section 1983, a plaintiff must allege that a defendant, while acting under color of state law, caused a deprivation of the plaintiff's federal rights. 42 U.S.C. § 1983; West v. Atkins, 487 U.S. 42, 48 (1988) (citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted). There is no vicarious liability in Section 1983 lawsuits. Iqbal, 556 U.S. at 676 (citing, *inter alia*, Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 691 (1978)). Hence, a government official – whether subordinate or supervisor – may be held liable under Section 1983 only when his or her own actions have caused a constitutional deprivation. OSU Student Alliance v.

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Ray, 699 F.3d 1053, 1069 (9th Cir. 2012) (citing id.), cert. denied, 134 S. Ct. 70 (2013).

An individual government defendant "causes" a constitutional deprivation when the defendant (1) "does an affirmative act, participates in another's affirmative acts, or omits to perform an act which [the defendant] is legally required to do that causes the deprivation"; or (2) "set[s] in motion a series of acts by others which the [defendant] knows or reasonably should know would cause others to inflict the constitutional injury." Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978) (citations omitted); see also Lacey v. Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (same) (citing id.). Allegations regarding causation "must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (citations omitted).

Similarly, a government official may be held liable under Section 1983 for acts taken in a supervisory capacity, but only if the supervisor's own misconduct caused an identifiable constitutional deprivation. See OSU Student Alliance, 699 F.3d at 1069 (citing Iqbal, 556 U.S. at 676). A supervisor "causes" a constitutional deprivation only if the official (1) personally participates in or directs a subordinate's constitutional violation; or (2) the constitutional deprivation can otherwise be "directly attributed" to the supervisor's own culpable action or inaction. See Starr v. Baca, 652 F.3d 1202, 1206-07 (9th Cir. 2011), cert. denied 132 S. Ct. 2101 (2012).

B. Heck v. Humphrey

In federal court, there are two distinct methods for state prisoners to raise complaints related to their imprisonment. See Muhammad v. Close, 540 U.S. 749, 750 (2004) ("Federal law opens two main avenues to relief on complaints related to imprisonment. . . .") (citing Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)). In

general, claims of constitutional violations related to the "circumstances" of a prisoner's confinement must be brought in a civil rights action under Section 1983, see id., while constitutional challenges to the *validity* or *duration* of a prisoner's confinement which seek either "immediate release from prison" or the "shortening of [a state prison] term" must be raised in a petition for federal habeas corpus under 28 U.S.C. § 2254 or through appropriate state relief, see Wilkinson v. Dotson ("Dotson"), 544 U.S. 74, 78-79 (2005) (citations and internal quotation marks omitted); Nettles v. Grounds, 830 F.3d 922, 927 (9th Cir. 2016) (en banc) ("The Court has long held that habeas is the exclusive vehicle for claims brought by state prisoners that fall within the core of habeas, and such claims may not be brought in a § 1983 action.") (citing Dotson, 544 U.S. at 81-82), petition for cert. filed, (Oct. 21, 2016) (No. 16-6556).

In Heck v. Humphrey, 512 U.S. 477 (1994), the Supreme Court held that a civil rights action must be dismissed if (1) it seeks "to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid"; and (2) the plaintiff is unable to show that the conviction or sentence has already been invalidated (*e.g.*, reversed on direct appeal, expunged by executive order, called into question by federal court's issuance of habeas relief). Id. at 486-87; Washington v. Los Angeles County Sheriff's Department, 833 F.3d 1048, 1054-55 (9th Cir. 2016) (citing id.). The Heck rule also applies to "suits challenging prison disciplinary proceedings" where the results of the proceedings or penalties imposed pursuant thereto "necessarily" affect "the duration of [a prisoner's] time to be served (by bearing on the award or revocation of good-time credits). . . ." See Muhammad, 540 U.S. at 754-55; Edwards v. Balisok, 520 U.S. 641, 646-48 (1997); Nettles, 830 F.3d at 928-31 (citations omitted). The Heck rule requires dismissal no matter the relief sought (*i.e.*, damages or equitable relief) as long as success in the Section 1983 action would necessarily demonstrate that the fact or duration of an inmate's

confinement was unlawful and not previously invalidated. See Dotson, 544 U.S. at 80-82 ("[A] state prisoner's § 1983 action is barred (absent prior invalidation) – no matter the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or internal prison proceedings) – if success in that action would necessarily demonstrate the invalidity of confinement or its duration.") (citations omitted).

C. First Amendment – Retaliation

"Prisoners have a First Amendment right to file grievances against prison officials . . . ." Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (citation omitted). Retaliation against a prisoner for exercising this right is an independent constitutional violation. Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009) (citations omitted).

To state a First Amendment retaliation claim, a complaint must plausibly allege that (1) the plaintiff/inmate engaged in conduct that is protected under the First Amendment; (2) a prison official took "adverse action" against the inmate; (3) the inmate's protected conduct was the "substantial or motivating factor" for the adverse action; (4) the adverse action "would chill or silence a person of ordinary firmness from future First Amendment activities"; and (5) the resulting retaliatory action "did not advance legitimate goals of the correctional institution" because it was either "arbitrary and capricious" or "unnecessary to the maintenance of order in the institution." Watison, 668 F.3d at 1114-15 (citations and internal quotation marks omitted).

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D. First Amendment – Right to Seek Redress/Access to Courts[2]

A prisoner's retain the First Amendment right "to petition the government for a redress of [] grievances," includes the specific right "to meaningful access to the courts[.]" Silva v. Di Vittorio, 658 F.3d 1090, 1101-02 (9th Cir. 2011) (citation omitted), abrogated on other grounds as stated in Richey v. Dahne, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015); Bounds v. Smith, 430 U.S. 817, 821 (1977) (well-established that prisoners have a constitutional right of access to the courts), abrogated in part on other grounds by, Lewis v. Casey, 518 U.S. 343, 354 (1996). The constitutional right of access to the courts generally requires prison officials to ensure that prisoners have the "capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." Lewis, 518 U.S. at 356. To that end, depending on the circumstances, prison officials may be required affirmatively to "help prisoners exercise their rights" (*e.g.*, provide reasonable access to "adequate law libraries or adequate assistance from persons trained in the law"), or simply to refrain from "active interference" in prisoner litigation. Silva, 658 F.3d at 1102 (citation omitted).

To state a viable denial of access claim, a prisoner/plaintiff must plausibly allege that some official misconduct caused "actual injury" – that is, that it frustrated or is impeding plaintiff's attempt to bring a nonfrivolous legal claim. Lewis, 518 U.S. at 348-49; Nevada Department of Corrections v. Greene, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing id. at 349), cert. denied, 132 S. Ct. 1823 (2012). The plaintiff must describe his underlying claim, whether anticipated or lost, and

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[2]The United States Supreme Court has recognized that the basis of the constitutional right of access to courts is somewhat unsettled. Christopher v. Harbury, 536 U.S. 403, 415 & n.12 (2002) (noting that decisions of U.S. Supreme Court have grounded right of access to courts in the Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses) (citations omitted).

show that it is "nonfrivolous" and "arguable." See Christopher v. Harbury, 536 U.S. 403, 415 (2002).

IV. DISCUSSION

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

First, the Complaint violates Rule 10 because plaintiff (1) did not name all of the defendants in the caption on the first page of the Complaint; (2) did not present his allegations in *sequentially* numbered paragraphs; and (3) improperly lumped all of his claims into a single count. See, e.g., Ferdik v. Bonzelet, 963 F.2d 1258, 1263 (9th Cir.), as amended (May 22, 1992) (affirming dismissal of action based on failure to comply with court order that complaint be amended to name all defendants in caption as required by Rule 10(a)), cert. denied, 506 U.S. 915 (1992).

Second, the allegations in the Complaint are insufficient to state a claim against defendants Abarca, Davis, Bandholtz, Halton, and Cornejo. The Complaint does not plausibly allege that any such defendant did any affirmative act, participated in another's affirmative act, failed to perform a legally required act, or participated in/directed particular conduct that caused the deprivations of which plaintiff complains. Nor does the Complaint plausibly allege that any alleged constitutional deprivation can otherwise be "directly attributed" to such defendants' own culpable action or inaction. Conclusory allegations that a defendant "let [certain] unlawful acts take place" at CRC, "let[] corruption into the facility," "was made aware of ISU officer's unlawful corruption and still [] went against plaintiff's constitutional rights and did not reverse RVR," "lied to cover up destroyed legal property," and "was made aware of the issues plaintiff has with the officers and yet [] still signed the Feb. 22, RVR, violating const. rights" (Complaint at 4-5, 7) are insufficient to state a plausible civil rights claim under Section 1983 against any such defendants. See Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992) (Vague and conclusory allegations of official participation in civil rights violations are not sufficient to state a claim under Section 1983.) (citing Ivey v. Board of Regents,

673 F.2d 266, 268 (9th Cir. 1982)). To state a viable Section 1983 individual capacity claim plaintiff must, at a minimum, allege facts which demonstrate the specific acts each individual defendant did and how that individual's alleged misconduct specifically violated plaintiff's constitutional rights.

Third, the Complaint fails to state a claim against the Doe defendant. (Ex. A at 16). While Local Rules permit plaintiff to sue up to ten unidentified "Doe" defendants (see Local Rule 19-1), as a general rule the use of fictitiously named parties is disfavored in federal court. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). Moreover, since plaintiff has not plausibly alleged individual misconduct by the Doe defendant personally, such unidentifiable defendant may be dismissed from the Complaint. See id.; McConnell v. Marine Engineers Beneficial Association Benefit Plans, District 1 - Pacific Coast District, 526 F. Supp. 770, 774 (N.D. Cal. 1981). Conclusory allegations that the Doe defendant was part of an indistinguishable group of "assisting officers" who were present when defendant Moeller allegedly retaliated against plaintiff are insufficient to state a claim under Section 1983. See Pena, 976 F.2d at 471 (citation omitted).

Fourth, the allegations in the Complaint are insufficient to state a viable claim against defendant Gonzalez. The Complaint does not plausibly allege that defendant Gonzalez, as plaintiff's correctional counselor, was personally involved with the alleged misconduct of other defendants (Ex. A at 18), much less that the defendant had any authority at all over the individuals who allegedly caused the deprivations of which plaintiff complains. Nor does the Complaint plausibly allege that any constitutional deprivation could otherwise be "directly attributed" to defendant Gonzalez's own culpable action or inaction. Plaintiff's conclusory allegations that after plaintiff reported the alleged misconduct defendant Gonzalez "did nothing to help [plaintiff], violating his rights (Ex. A at 18) are insufficient to

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show defendant Gonzalez's personal participation in any civil rights violation. See Pena, 976 F.2d at 471 (citation omitted).

Fifth, the Complaint also fails to state a viable Section 1983 claim against defendant Tampkins. Plaintiff's conclusory allegations that "[he] was seeking to resolve any and all issues at hand through . . . [defendant] Tampkins and [the defendant] used retaliation, harassment tactics by going to Dorm 108 where [plaintiff] is [sic] went to his living area and destroyed it[,] [v]iolating a federal protected right (right to free speech) [] without being retaliated against[]" (Complaint at 3; Ex. A at 18) are insufficient to state a plausible civil rights claim against such defendant. Pena, 976 F.2d at 471 (citation omitted). To the extent plaintiff intends to sue defendant Tampkins (or any of the other supervisory defendants named in the Complaint) because she generally failed to prevent her subordinates from engaging in the official misconduct alleged, the Complaint fails to state a viable Section 1983 claim. A federal civil rights claim may not be based solely on a defendant's supervisory position. See Taylor, 880 F.2d at 1045 ("There is no respondeat superior liability under section 1983.") (citation omitted).

Sixth, to the extent plaintiff intends to assert a First Amendment claim for denial of access to the courts based on allegations that defendant Carrion improperly seized and/or destroyed plaintiff's legal documents (Ex. A at 13-14), he fails plausibly to do so. Even assuming (without deciding) that defendant Carrion's actions in some way actively interfered with plaintiff's prisoner litigation, the Complaint has not plausibly alleged that such interference frustrated or impeded plaintiff's attempt to bring a *specific* and *nonfrivolous* legal claim. Conclusory allegations that "plaintiff was in fact crippled" because defendant Carrion took plaintiff's legal documents, or that unspecified "[s]anctions were brought against [plaintiff]" and that "another one [sic] dismissed" (Ex. A at 14) (citing Ex. C) are insufficient to establish actual injury. See Pena, 976 F.2d at 471 (citation omitted); see also Iqbal, 556 U.S. at 680-84 (conclusory allegations in complaint which

amount to nothing more than a "formulaic recitation of the elements" are insufficient under pleading standard in Fed. R. Civ. P. 8) (citations omitted). The exhibits plaintiff references (Ex. A at 14; Ex. C at 74-81) do not plausibly support such conclusory assertions, much less an inference that plaintiff suffered any specific "actual injury" due to defendant Carrion's alleged misconduct.

Seventh, the Complaint fails to state a viable Section 1983 claim against defendants Moore and Serna. Plaintiff's claims against such defendants, at most, appear to be predicated upon the alleged improper processing of plaintiff's inmate grievances. (Ex. A at 14-15). Nonetheless, a prison official's improper processing of an inmate's grievances or appeals, without more, cannot serve as a basis for Section 1983 liability.[3] See generally Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (Prisoners do not have a "separate constitutional entitlement to a specific prison grievance procedure.") (citation omitted), cert. denied, 541 U.S. 1063 (2004); Mann v. Adams, 855 F.2d 639, 640 (9th Cir.) (due process not violated simply because defendant fails properly to process grievances submitted for consideration), cert. denied, 488 U.S. 898 (1988); see, e.g., Todd v. California Department of Corrections and Rehabilitation, 615 Fed. Appx. 415, 415 (9th Cir. 2015) (district court properly dismissed claim based on improper "processing and handling of [] prison grievances," since prisoners have no "constitutional entitlement to a specific prison grievance procedure") (quoting Ramirez, 334 F.3d at 860) (quotation marks omitted); Shallowhorn v. Molina, 572 Fed. Appx. 545, 547 (9th Cir. 2014) (district court properly dismissed Section 1983 claims against defendants who "were only involved in the appeals process") (citing Ramirez, 334

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[3]While a prison official's alleged failure to process an inmate grievance may implicate a prisoner's First Amendment right of access to the courts, the Complaint fails to state such a claim because plaintiff does not plausibly allege that any defendant *actually failed* to process his grievances, that an actual injury resulted from any failure to process plaintiff's grievances or that any such conduct actually "hindered his efforts to pursue a [nonfrivolous] legal claim." Lewis, 518 U.S. at 351-53, 354-55.

F.3d at 860). Plaintiff's conclusory allegations that an indistinguishable group of defendants retaliated against him "through improper treatment of his grievances" (Ex. A at 14) are insufficient to state a viable Section 1983 claim. See, e.g., Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) ("In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation[.]"); Taylor, 880 F.2d at 1045 ("Liability under section 1983 arises only upon a showing of personal participation by the defendant."); see also Pena, 976 F.2d at 471 (citation omitted); Iqbal, 556 U.S. at 680-84 (citations omitted).

Eighth, to the extent the Complaint seeks damages stemming from false disciplinary charges allegedly brought by defendants Carrion or Moeller and/or for violations of plaintiff's constitutional rights in connection with disciplinary hearings conducted by defendant Lares and/or defendant Keehmer which resulted in deprivation of plaintiff's good time credits (Complaint at 13-17), plaintiff's Section 1983 claims are barred under the principles announced in Heck. See, e.g., Balisok, 520 U.S. at 645-46 (where inmate challenge to loss of good time credits or prison disciplinary procedures necessarily implies invalidity of the judgment, claim barred by Heck); see also Dotson, 544 U.S. at 81-82 (state prisoner's Section 1983 challenge to prison disciplinary proceedings "barred (absent prior invalidation)" if success in that civil rights action would necessarily result in inmate's "immediate or speedier release"). Here, the Complaint allegations and exhibits appear to suggest that any disciplinary charge or proceeding which resulted in plaintiff's alleged loss of good time credits has not already been found invalid.

Ninth, allegations that plaintiff was harassed by one or more defendant, without more, are insufficient to state a constitutional deprivation under Section 1983. Cf., e.g., Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (claims

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of verbal harassment or abuse do not state a constitutional deprivation) (citation omitted).

Finally, the remaining allegations in the Complaint are rambling and confusing, and replete with immaterial background information, as well as duplicative, irrelevant, and, at times, unintelligible and conclusory factual and legal assertions which, on the whole, do nothing to plausibly connect any particular act or incident to a specific legal claim against any individual defendant, and consequently are insufficient to state any viable Section 1983 claim. See Pena, 976 F.2d at 471 (citation omitted); Iqbal, 556 U.S. at 680-84 (citations omitted); see also Knapp v. Hogan, 738 F.3d 1106, 1109-10 & n.1 (9th Cir. 2013) (violations of Rule 8 "short and plain statement" requirement "warrant dismissal") (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."); Stewart v. Ryan, 2010 WL 1729117, at *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 Section 1983 claim merely by referencing exhibits he attached to the Complaint, 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).

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V. 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) days of the date of this Order which cures the pleading defects set forth herein.[4] 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.

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[4]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 individual defendant did and how that individual's conduct specifically violated plaintiff's civil rights; (i) state the names of all defendants in the caption (Fed. R. Civ. P. 10(a)); and (j) 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).

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 result in the dismissal of this action with or without prejudice on the grounds set forth above and/or for failure diligently to prosecute and/or for failure to comply with the Court's Order.**

IT IS SO ORDERED.

DATED: December 19, 2016

HONORABLE JOHN F. WALTERS
UNITED STATES DISTRICT JUDGE

Attachments