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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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|-------------------|---|---------------------------------------|
| CESAR URIBE, |) | No. CV 5:17-00558-CJC (AS) |
| |) | |
| Plaintiff, |) | |
| v. |) | ORDER DISMISSING FIRST AMENDED |
| |) | |
| T. PEREZ, et al., |) | COMPLAINT WITH LEAVE TO AMEND |
| |) | |
| Defendants. |) | |
| |) | |

I. INTRODUCTION

Plaintiff Cesar Uribe ("Plaintiff"), an inmate at the California Institute for Men (CIM) in Chino, California, proceeding pro se, filed a First Amended Complaint on September 25, 2017, (Docket Entry No. 13 ("FAC")), following the Court's dismissal of his original Complaint with leave to amend on April 18, 2017, (Docket Entry No. 6).¹ Plaintiff seeks relief, in relevant part, for the violation of his federal constitutional rights, which are redressable under 42 U.S.C. § 1983.

¹ Plaintiff filed the case in California state court on February 11, 2016, and Defendants filed a notice of removal on March 23, 2017, pursuant to 28 U.S.C. § 1441(a). (Docket Entry No. 2).

1 The Court has screened the Complaint as prescribed by 28 U.S.C.
2 § 1915A and 42 U.S.C. § 1997e. For the reasons discussed below, the
3 Court DISMISSES Plaintiff's Complaint WITH LEAVE TO AMEND.²

4
5 **II. ALLEGATIONS OF THE FIRST AMENDED COMPLAINT**

6
7 The First Amended Complaint names the following Defendants in
8 their individual and official capacities: (1) Louie Escobell, CEO
9 ("Escobell"); (2) Muhammad A. Farooq, CMO ("Farooq"); (3) Larry
10 Maldonado, CHSA II ("Maldonado"); (4) Jose Serrano, CNE ("Serrano");
11 (5) Tim Perez, Warden ("Perez"); and (6) B. LeMaster, Associate
12 Warden ("LeMaster"). He also names the following Defendants in their
13 individual capacities: (1) J. Christofferson, SRN II
14 ("Christofferson"); (2) Captain R. Franco ("Franco"); (3) Lieutenant
15 C.T. Stansbury ("Stansbury"); and (4) Lieutenant D. Williams
16 ("Williams"). In addition, he names as Defendants John Does 1-20.
17 Plaintiff states that Does 1-10 are prison medical staff members and
18 that Does 11-20 are prison custody staff members. (FAC at 4). He
19 states that the "true names and capacities" of the Doe defendants
20 "are presently unknown" to him, but he "will seek leave to amend" his
21 pleading when he ascertains this information.³ (Id.).

22
23 ² Magistrate judges may dismiss a complaint with leave to
24 amend without approval from the district judge. McKeever v. Block,
932 F.2d 795, 798 (9th Cir. 1991).

25 ³ The Court previously advised Plaintiff that he is responsible
26 for providing sufficient identifying information about these
27 fictitious Defendants before the Court can order service of process
28 by the United States Marshall upon such Defendants, and may be
required to conduct discovery to determine their identities if he
pursues this action. See Gillespie v. Civiletti, 629 F.2d 637, 642-43
(9th Cir. 1980).

1 Plaintiff alleges that, while he was an inmate at CIM,
2 Defendants' actions and inactions caused him to contract the
3 norovirus. (Id. at 4-8). Plaintiff alleges that CIM is a "High Risk
4 Medical" ("HRM") facility at which he was housed in dorm A8. (Id. at
5 4, 7). He claims that Escobell, Farooq, Maldonado, and Does 1-5
6 "created and implemented the practice of specifically and randomly
7 designating Facility A dorms as makeshift 'quarantine dorms' to
8 quarantine inmates with highly infectious, communicable, and
9 contagious diseases, such as the norovirus." (Id. at 5). He asserts
10 that that "[t]hese defendants knew that Facility A dorms were not
11 designed or built to be quarantine dorms nor are they modified for
12 quarantine of inmates when designated and used for quarantine
13 purposes." (Id.). Perez, Lemaster, and Does 11-15, according to
14 Plaintiff, "knew of this practice and approved it or ratified it."
15 (Id. at 6).

16
17 Plaintiff claims that on or about "November of 2014, HRM inmates
18 at CIM Facility A, dorm A6, contracted norovirus." (Id.). Plaintiff
19 alleges that Stansbury, Williams, and Does 16-20 knew about this, and
20 Franco, Perez, Lemaster, Escobell, Farooq, Maldonado, Serrano,
21 Christofferson, and Does 1-10 were also "notified" about it. (Id.).
22 Plaintiff alleges that, to address the matter, Escobell, Farooq,
23 Maldonado, Serrano, and Does 1-5 "ordered" Christofferson and Does 6-
24 10 "to designate dorm A6 as a quarantine dorm" and follow the alleged
25 procedures. (Id.) This was ordered "with the knowledge and
26 approval" of Perez, Lemaster, Franco, and Does 11-15. (Id.) Under
27 this approach, Plaintiff claims that Defendants forced uninfected
28 inmates to interact and be housed with infected inmates without

1 providing the inmates with care or protection to prevent the virus
2 from spreading further. (Id. at 6-7). Plaintiff alleges that
3 infected inmates were moved to other dorms, including A8, Plaintiff's
4 dorm. (Id. at 7). Plaintiff claims that on or about December 12,
5 2014, he contracted norovirus, suffering various symptoms, including
6 "an immediate unforeseen and sudden onset of queasiness, nausea,
7 persistent vomiting, stomach cramps and pain, muscle pain, body
8 aches, fever, persistent diarrhea, and weight loss, that rendered
9 [him] incapacitated and bed-ridden because of the headaches, muscle
10 pain, lethargy, and depletion of energy caused by repeated vomiting
11 and diarrhea." (Id. at 8).

12
13 Plaintiff asserts five "claims" against Defendants, but only the
14 first claim is brought under federal law. (Id. at 9-12).
15 Specifically, the first claim, against all Defendants, is for
16 violation of the Eighth Amendment for "failure to protect from
17 substantial risk of harm." (Id. at 9). The second claim, also
18 against all Defendants, is a claim for intentional tortious conduct
19 in violation of California Civil Code §§ 52.1(b) and 52(a). (Id.).
20 The third claim seeks declaratory relief against all Defendants,
21 declaring that Defendants' "policies, practices, acts, and omissions"
22 - including forcing Plaintiff and others "to share dining halls,
23 dorms, medical clinics, work and education areas with known
24 norovirus-infected inmates" - violate Plaintiff's rights under the
25 Eighth and Fourteenth Amendments. (Id. at 10-11). Plaintiff's
26 fourth claim is a negligence claim against Perez, Lemaster, Escobell,
27 Farooq, Serrano, Maldonado, and Does 1-5 and 11-15 for failing, among
28 other things, to implement and enforce adequate policies and

1 procedures to protect Plaintiff and other inmates from the spread of
2 infections. (Id. at 11-12). The fifth and final claim is a
3 negligence claim against Franco, Stansbury, Williams, Christofferson,
4 and Does 6-10 and 16-20 for failing in their duty to protect
5 Plaintiff and others from the norovirus despite having "immediate and
6 direct control" over the inmates. (Id. at 12).

7 8 **III. STANDARD OF REVIEW**

9
10 Congress mandates that district courts initially screen civil
11 complaints filed by prisoners seeking redress from a governmental
12 entity or employee. 28 U.S.C. § 1915A. A court may dismiss such a
13 complaint, or any portion thereof if the court concludes that the
14 complaint: (1) is frivolous or malicious; (2) fails to state a claim
15 upon which relief may be granted; or (3) seeks monetary relief from a
16 defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)-
17 (2); see also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir.
18 2000) (en banc).

19
20 Dismissal for failure to state a claim is appropriate if a
21 complaint fails to proffer "enough facts to state a claim for relief
22 that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.
23 544, 570 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "A
24 claim has facial plausibility when the plaintiff pleads factual
25 content that allows the court to draw the reasonable inference that
26 the defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
27 at 678; see also Hartmann v. Cal. Dep't of Corr. & Rehab., 707 F.3d
28 1114, 1122 (9th Cir. 2013). A plaintiff must provide "more than

1 labels and conclusions" or a "formulaic recitation of the elements"
2 of his claim. Twombly, 550 U.S. at 555; Iqbal, 556 U.S. at 678.
3 However, "[s]pecific facts are not necessary; the [complaint] need
4 only 'give the defendant fair notice of what the . . . claim is and
5 the grounds upon which it rests.'" Erickson v. Pardus, 551 U.S. 89,
6 93 (2007) (per curiam) (quoting Twombly, 550 U.S. at 555).

7
8 In considering whether to dismiss a complaint, a court is
9 generally limited to the pleadings and must construe all "factual
10 allegations set forth in the complaint . . . as true and . . . in the
11 light most favorable" to the plaintiff. Lee v. City of L.A., 250
12 F.3d 668, 688 (9th Cir. 2001). Moreover, pro se pleadings are "to be
13 liberally construed" and held to a less stringent standard than those
14 drafted by a lawyer. Erickson, 551 U.S. at 94; see also Hebbe v.
15 Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal incorporated the
16 Twombly pleading standard and Twombly did not alter courts' treatment
17 of pro se filings; accordingly, we continue to construe pro se
18 filings liberally when evaluating them under Iqbal"). Nevertheless,
19 dismissal for failure to state a claim can be warranted based on
20 either the lack of a cognizable legal theory or the absence of
21 factual support for a cognizable legal theory. Mendiondo v.
22 Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A
23 complaint may also be dismissed for failure to state a claim if it
24 discloses some fact or complete defense that will necessarily defeat
25 the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir.
26 1984).

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IV. DISCUSSION

While Plaintiff's First Amended Complaint appears to remedy some of the defects in the original Complaint, it still contains deficiencies warranting dismissal with leave to amend.⁴ See 28 U.S.C. 1915A(b)(1).

In particular, the First Amended Complaint does not comply with the pleading standards of Rules 8 and 10 of the Federal Rules of Civil Procedure. Rule 8 requires a pleading to contain "a short and plain statement of the claim showing that [plaintiff] is entitled to relief." Fed. R. Civ. P. 8(a)(2). "Each allegation must be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Rule 10, moreover, requires each paragraph to be "limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(b).

Here, Plaintiff fails to clearly convey the basis for each of his claims and to sufficiently advise Defendants of the claims and allegations being asserted against each of them. Plaintiff's "first claim," for example, is labeled as a claim against all Defendants for

⁴ Under 28 U.S.C. § 1367(a), if a district court has original jurisdiction over one or more claims, the court also has supplemental jurisdiction over all state law claims that arise out of the same transaction or occurrence. 28 U.S.C. § 1367(a). However, if all federal claims have been dismissed, the district court no longer has supplemental jurisdiction over the state law claims. Id. Here, the Court has dismissed all of Plaintiff's federal claims with leave to amend. As a result, the court no longer has jurisdiction over Plaintiff's tort claims of intentional conduct and general negligence and claims for violations of California Civil Code violations. Accordingly, Plaintiff's state law claims are dismissed without prejudice.

1 violation of the Eighth Amendment for "failure to protect from
2 substantial risk of harm." (FAC at 9). The claim, however, states
3 only that it "allege[] and incorporate[] . . . by reference" the
4 allegations of all preceding paragraphs, leaving the Court and
5 Defendants to guess which particular allegations among the twenty-
6 seven preceding paragraphs might form a basis for relief. (Id.) The
7 other four claims in the First Amended Complaint (for state law
8 violations and declaratory relief) contain more specific support, but
9 they, too, "incorporate[]" the allegations of all preceding
10 paragraphs, including the paragraphs of preceding claims, making it
11 impossible to discern which particular allegations are at issue in
12 each individual claim. (Id. at 12).

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15 In addition, many of Plaintiff's factual allegations are set
16 forth in lengthy paragraphs containing multiple assertions, which
17 will make it difficult for Defendants to respond effectively in an
18 Answer. Such paragraphs should be consolidated or broken down into
19 shorter, simpler paragraphs of no more than a sentence or two each.

20 21 V. CONCLUSION

22
23 For the reasons discussed above, the Court DISMISSES Plaintiff's
24 claims WITH LEAVE TO AMEND.

25
26 If Plaintiff still wishes to pursue this action, he shall file a
27 Second Amended Complaint **no later than 30 days from the date of this**
28 **Order. The Second Amended Complaint must cure the pleading defects**

1 discussed above and shall be complete in itself without reference to
2 prior pleadings. See L.R. 15-2 ("Every amended pleading filed as a
3 matter of right or allowed by order of the Court shall be complete
4 including exhibits. The amended pleading shall not refer to the
5 prior, superseding pleading."). This means that Plaintiff must
6 allege and plead any viable claims he wishes to retain in the case.

7
8 In any amended complaint, Plaintiff should identify the nature
9 of each separate legal claim and confine his allegations to those
10 operative facts supporting each of his claims. For each separate
11 legal claim, Plaintiff should state the civil right that has been
12 violated and the supporting facts for that claim only. Pursuant to
13 Federal Rule of Civil Procedure 8(a), all that is required is a
14 "short and plain statement of the claim showing that the pleader is
15 entitled to relief." However, Plaintiff is advised that the
16 allegations in the Second Amended Complaint should be consistent with
17 the authorities discussed above. In addition, the Second Amended
18 Complaint may not include new Defendants or claims not reasonably
19 related to the allegations in the previously filed complaints.
20 **Plaintiff is strongly encouraged to once again utilize the standard**
21 **civil rights complaint form when filing any amended complaint, a copy**
22 **of which is attached.**

23
24 Plaintiff is explicitly cautioned that failure to timely file a
25 Second Amended Complaint, or failure to correct the deficiencies
26 described above, may result in a recommendation that this action, or
27 portions thereof, be dismissed with prejudice for failure to
28 prosecute and/or failure to comply with court orders. See Fed. R.

1 Civ. P. 41(b). Plaintiff is further advised that if he no longer
2 wishes to pursue this action in its entirety or with respect to
3 particular Defendants or claims, he may voluntarily dismiss all or
4 any part of this action by filing a Notice of Dismissal in accordance
5 with Federal Rule of Civil Procedure 41(a)(1). A form Notice of
6 Dismissal is attached for Plaintiff's convenience.

7
8 IT IS SO ORDERED.

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10 Dated: October 12, 2017

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12 _____/s/_____
13 ALKA SAGAR
14 United States Magistrate Judge
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