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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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

INTRODUCTION

Plaintiff Cesar Uribe ("Plaintiff"), an inmate at the California Institute for Men (CIM) in Chino, California, filed this pro se civil action in San Bernardino County Superior Court on February 11, 2016. Plaintiff seeks relief, in relevant part, for the violation of his federal constitutional rights, which are redressable under 42 U.S.C. § 1983. The Complaint names as Defendants: (1) Louie Escobell, CEO; (2) Muhammad A. Farooq, CMO; (3) Larry Maldonado, CHSA II; (4) Jose Serrano, CNE; (5) J. Christofferson, SRN II; (6) Tim

1 Perez, Warden; (7) B. LeMaster[], Associate Warden; (8) Captain R.
2 Franco; (9) Lieutenant C.T. Stansbury; (10) Lieutenant D. Williams;
3 and (11) DOES 1-20.
4

5 Plaintiff states that DOES 1-5 were, during the relevant time,
6 employed by the California Department of Corrections and
7 Rehabilitation ("CDCR") as Chief Executive Officers, Chief Medical
8 Officers or Executives, or Health Services Administrators, or
9 supervisors of medical staff at CIM. (Compl. 5). Plaintiff further
10 states that DOES 6-10 and 11-20 were at all relevant times employed
11 by CDCR and were the commanding officers of CIM Facility A. (Compl.
12 6). Plaintiff also states that DOES 11-15 were responsible, along
13 with DOES 1-5, for ensuring that all CIM medical and custodial staff,
14 including medical care contractors, complied with ethical,
15 professional, and applicable laws. (Compl. 6). Defendants are sued
16 in their individual and official capacities. (Id.).
17

18 Defendants J. Serrano, L. Maldonado, L. Escobell, B. LeMaster,
19 M. Farooq, C. Stansbury, J. Christofferson, D. Williams and T. Perez
20 ("Defendants") filed a notice of removal on March 23, 2017, pursuant
21 to 28 U.S.C. § 1441(a). (Docket Entry No. 2).
22

23 Plaintiff alleges that Defendants violated his Eighth Amendment
24 right "to be free from cruel and unusual punishment under the
25 California and U.S. Constitutions" (Compl. 11) when they engaged in
26 conduct that was "intentional, and/or was done with reckless
27 disregard for, and/or deliberate indifference toward, plaintiff's
28 rights" (Compl. 7) which led to Plaintiff contracting the "norovirus

1 on or about December 12, 2014 and suffer[ing] all of its symptoms".
2 (Compl. 9).

3
4 Plaintiff also alleges that Defendants are civilly liable in
5 torts for (1) "Intentional" conduct (Compl. 4, 11-12); and (2)
6 General Negligence (Compl. 4, 13-16) and that Defendants are liable
7 for violations of California Civil Code §§ 52.1(b) and 52(a).
8 (Compl. 11).

9
10 Plaintiff requests declaratory relief against Defendants Perez,
11 LeMaster[], Escobell, Farooq, and DOES 1-5. (Compl. 12).
12 Specifically, Plaintiff seeks, in part, a judgment declaring that
13 Defendants' policies, practices, acts and omissions violate his
14 rights. (Id.). Plaintiff further requests (1) "[p]ermanent
15 injunctive relief prohibiting defendants from continuing to engage in
16 the specific unlawful practices complained of"; (2) \$50,441 of
17 general damages; (3) \$25,000 of punitive damages; (4) statutory
18 damages as allowed by law, "including statutory and treble damages
19 under California Civil Code §§ 52 and 52.1"; (5) attorneys' fees and
20 costs; (6) the costs of suit; and (7) such other and further relief
21 as the Court deems just and proper. (Compl. 18).

22
23 The Court has screened the Complaint as prescribed by 28 U.S.C.
24 § 1915A and 42 U.S.C. § 1997e. For the reasons discussed below, the
25 Court DISMISSES Plaintiff's Complaint WITH LEAVE TO AMEND.¹

26 ¹ Magistrate judges may dismiss a complaint with leave to amend
27 without approval from the district judge. McKeever v. Block, 932
28 F.2d 795, 798 (9th Cir. 1991).

1 **PLAINTIFF'S ALLEGATIONS**

2
3 Plaintiff alleges that, while he was an inmate at CIM,
4 Defendants' actions and, where applicable, inactions caused him to
5 contract the norovirus. (Compl. 5-10). Plaintiff alleges that CIM
6 is a "High Risk Medical" ("HRM") facility at which he was housed in
7 dorm A8. (Compl. 8). He claims that on or about "November of 2014,
8 HRM inmates at CIM Facility A, dorm A6, contracted norovirus."
9 (Id.). Plaintiff alleges that Defendants not only "failed to give
10 dorm A6 inmates medical care and treatment", they "knowingly moved
11 infected dorm A6 inmates to other non-infected dorms", including A8,
12 compelling non-infected inmates to live with infected inmates and
13 allowing infected inmates to share dining spaces and medical clinics,
14 among other areas, with non-infected inmates. (Id.). Plaintiff
15 alleges that Defendants failed to provide dorm A8 inmates with "latex
16 gloves, facial masks, or the necessary chemicals to protect
17 themselves from exposure to" the norovirus. (Id.). Plaintiff claims
18 that on or about December 12, 2014, he contracted norovirus and
19 "suffered all of its symptoms including but not limited to an
20 immediate unforeseen and sudden onset queazyness, nausea, persistent
21 vomiting, stomach cramps and pain, muscle pain, body aches, fever,
22 persistent diarrhea, and weight loss, for approximately a week . . ."
23 (Compl. 9).

24
25 Plaintiff alleges that as a "direct and proximate result" of
26 Defendants' acts and omissions, he "suffered injuries in the form of,
27 but not limited to, pain and suffering, mental and emotional
28 distress". (Compl. 9).

1 In considering whether to dismiss a complaint, a court is
2 generally limited to the pleadings and must construe all "factual
3 allegations set forth in the complaint . . . as true and . . . in the
4 light most favorable" to the plaintiff. Lee v. City of L.A.,
5 250 F.3d 668, 688 (9th Cir. 2001). Moreover, pro se pleadings are
6 "to be liberally construed" and held to a less stringent standard
7 than those drafted by a lawyer. Erickson, 551 U.S. at 94; see also
8 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal
9 incorporated the Twombly pleading standard and Twombly did not alter
10 courts' treatment of pro se filings; accordingly, we continue to
11 construe pro se filings liberally when evaluating them under
12 Iqbal"). Nevertheless, dismissal for failure to state a claim can
13 be warranted based on either the lack of a cognizable legal theory or
14 the absence of factual support for a cognizable legal theory.
15 Mendondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.
16 2008). A complaint may also be dismissed for failure to state a
17 claim if it discloses some fact or complete defense that will
18 necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221,
19 1228-29 (9th Cir. 1984).

20 21 DISCUSSION

22
23 Plaintiff's Complaint contains deficiencies warranting
24 dismissal, although leave to amend should be granted.² See 28 U.S.C.
25 1915A(b)(1).

26
27 ² Under 28 U.S.C. §1367(a), if a district court has original
28 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

1 **A. The Complaint Fails To Satisfy Federal Rule of Civil Procedure 8**

2 The Court advises Plaintiff of the following requirements under
3 the Federal Rules of Civil Procedure regarding the general formatting
4 of his Complaint. The Complaint must contain "a short and plain
5 statement of the claim showing that [plaintiff] is entitled to
6 relief." Fed. R. Civ. P. 8(a)(2). "Each allegation must be simple,
7 concise, and direct." Fed. R. Civ. P. 8(d)(1). Lengthy complaints
8 violate Rule 8 if a defendant would have difficulty responding to the
9 complaint. Cafasso, U.S. ex rel. v. General Dynamics C4 Systems,
10 Inc., 637 F.3d 1047, 1059 (9th Cir. 2011).

11
12
13 Plaintiff's Complaint does not comply with the standards of Rule
14 8. The unnecessarily long Complaint, which mixes potentially
15 relevant and irrelevant facts with legal argument, is confusing,
16 overly wordy, and redundant. For example, in Count I, paragraph six,
17 Plaintiff states:

18
19 Defendants Tim Perez, Warden, and LeMaster[],
20 Associate Warden, were at all times relevant to this
21 action responsible for supervising, disciplining,
22 directing, governing, administrating, and providing
23 necessary training for all correctional officers and
24 medical staff employed at CIM. Defendants were at
25 all times the final authorities at CIM and were also

26 federal claims have been dismissed, the district court no longer has
27 supplemental jurisdiction over the state law claims. Id. Here, the
28 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 responsible for all the practices and procedures
2 formulated, promulgated, disseminated, modified and
3 enforced by correctional and medical staff alike.

4 (Compl. 6).³ It is unnecessary for Plaintiff to enumerate every
5 potential duty of Defendants Perez and LeMaster. Rather, Plaintiff
6 need only describe the relevant facts in simple, direct, and concise
7 terms, as well as how each Defendant personally participated in an
8 alleged deprivation of constitutional rights or knew of
9 constitutional violations and failed to prevent them.

10
11 To provide another guiding example, in Count I, paragraph
12 fifteen, Plaintiff alleges that Defendants "knowingly moved infected
13 dorm A6 inmates to other non-infected dorms, forced, coerced, and
14 compelled non-infected inmates to live with infected inmates, and
15 effectively exposed non-infected inmates and placed them at an
16 unnecessary high risk of being infected". (Compl. 8). In subsequent
17 paragraphs, Plaintiff goes on to describe, in detail, each specific
18 area that Defendants allowed infected inmates to use simultaneously
19 with non-infected inmates. (Compl. 8-9). At times, these
20 allegations can be consolidated into shorter and simpler statements.
21 The level of detail provided is both unnecessary and confusing.

22
23
24 Plaintiff is further cautioned to avoid making redundant
25 averments. Multiple paragraphs re-state, in different ways, claims

26
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³ All page references correspond with the pagination provided by
28 the Court's electronic docket.

1 Plaintiff previously made. Again, Plaintiff need only once describe
2 the relevant facts in short and simple terms.

3
4 **B. Supervisory Liability**

5
6 To demonstrate a civil rights violation against a government
7 official, a plaintiff must show either direct, personal participation
8 of the official in the harm or some sufficient causal connection
9 between the official's conduct and the alleged constitutional
10 violation. See Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir.
11 2011). To be held liable, a supervising officer has to personally
12 take some action against the plaintiff or "set in motion a series of
13 acts by others . . . which he knew or reasonably should have known,
14 would cause others to inflict the constitutional injury" on the
15 plaintiff. Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir.
16 1991) (internal quotations omitted). Government officials may not be
17 held liable for the unconstitutional conduct of their subordinates
18 under a theory of respondeat superior. See Ashcroft v. Iqbal, 556
19 U.S. 662, 676 (2009). Rather, "[s]upervisory liability [may be]
20 imposed against a supervisory official in his individual capacity
21 [only] for his own culpable action or inaction in the training,
22 supervision, or control of his subordinates, for his acquiescence in
23 the constitutional deprivations of which the complaint is made, or
24 for conduct that showed a reckless or callous indifference to the
25 rights of others." Preschooler II v. Clark County Bd. of Trustees,
26 479 F.3d 1175, 1183 (9th Cir. 2007).

1 "Vague and conclusory allegations of official participation in
2 civil rights violations are not sufficient to withstand a motion to
3 dismiss." Ivey v. Bd. Of Regents, 673 F.2d 266, 268 (9th Cir. 1982);
4 see also Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th
5 Cir. 1997); Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992) (per
6 curiam).

7
8 Plaintiff alleges that "[a]ll individual defendants are named
9 based on their personal involvement and/or supervisory liability
10 for their role in the constitutional deprivations alleged". (Compl.
11 7). Specifically, Plaintiff lists (1) Louie Escobell, CEO; (2)
12 Muhammed A. Farooq, CMO; (3) Larry Maldonado, CHSA II; (4) Jose
13 Serrano, CNE; (5) J. Christofferson, SRN II; (6) and DOES 1-5 as
14 Defendants (Compl. 5), however fails to allege particular facts which
15 demonstrate that these individuals personally participated in an
16 alleged deprivation of constitutional rights or knew of
17 constitutional violations and failed to act to prevent them.
18

19
20 Plaintiff is instructed to describe how each Defendant
21 specifically and personally participated in an alleged deprivation of
22 constitutional rights, knew of constitutional violations and failed
23 to act to prevent them, or some sufficient causal connection between
24 the official's conduct and the alleged constitutional violation.

25 \\

26 \\

27 \\

1 C. Plaintiff Must Identify The Doe Defendants Before The Court May
2 Order Service Of Process

3
4 The Complaint names twenty Doe defendants. A plaintiff's
5 complaint may name a fictitious defendant if the plaintiff does not
6 know the true identity of the defendant prior to the filing of the
7 complaint. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir.
8 1999). Nonetheless, before the Court can order service of process by
9 the United States Marshal upon any fictitious defendant, a plaintiff
10 must provide the Court identifying information sufficient to permit
11 the United States Marshal to effect service of process. Thus, a
12 plaintiff should generally be given an opportunity to discover the
13 names of unknown defendants. See Gillespie v. Civiletti, 629 F.2d
14 637, 642-43 (9th Cir. 1980).

15
16 It is premature to order discovery because Plaintiff's claims
17 are defective for reasons unrelated to the naming of fictitious
18 defendants. See Wakefield, 177 F.3d at 1163. Plaintiff is advised
19 that he may be required to conduct discovery to determine the
20 identities of any Doe defendants if he pursues this action.

21
22 Plaintiff is also advised that he must establish that every
23 Defendant, including every unknown defendant, had personal
24 involvement in the civil rights violations alleged and that the
25 defendant's action or inaction caused the harm suffered. See Starr,
26 652 F.3d at 1207.

1 civil rights complaint form when filing any amended complaint, a copy
2 of which is attached.

3
4 Plaintiff is explicitly cautioned that failure to timely file a
5 First Amended Complaint, or failure to correct the deficiencies
6 described above, may result in a recommendation that this action, or
7 portions thereof, be dismissed with prejudice for failure to
8 prosecute and/or failure to comply with court orders. See Fed. R.
9 Civ. P. 41(b). Plaintiff is further advised that if he no longer
10 wishes to pursue this action in its entirety or with respect to
11 particular Defendants or claims, he may voluntarily dismiss all or
12 any part of this action by filing a Notice of Dismissal in accordance
13 with Federal Rule of Civil Procedure 41(a)(1). A form Notice of
14 Dismissal is attached for Plaintiff's convenience.

15
16 IT IS SO ORDERED.

17
18 Dated: April 18, 2017

19
20 _____/s/_____
ALKA SAGAR
21 United States Magistrate Judge
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