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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSE MANUEL LOPEZ,)	CASE NO. SA CV 14-1369 SVW (RZ)
)	
Plaintiff,)	
)	MEMORANDUM AND ORDER
vs.)	DISMISSING COMPLAINT WITH
)	LEAVE TO AMEND
CITY OF SANTA ANA, ET AL.,)	
)	
Defendants.)	
_____)	

Plaintiff appears to claim that he was wrongfully arrested for an unspecified alleged parole violation, never proven, and not released until he had spent 67 days in a dangerous and substandard jail. He sues several officials and the City of Santa Ana for a morass of claims and quasi-claims. The Court will dismiss the overlong, speechifying and confusing civil rights complaint, with leave to amend, for several reasons discussed below, but principally because Plaintiff states no “short and plain” entitlement to relief.

I.
NO “SHORT AND PLAIN” STATEMENT

A. Applicable Law

Federal Rule of Civil Procedure 8(a) requires that “[a] pleading which sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim

1 showing that the pleader is entitled to relief.” “A claim is the ‘aggregate of operative facts
2 which give rise to a right enforceable in the courts.’” *Bautista v. Los Angeles County*, 216
3 F.3d 837, 840 (9th Cir. 2000) (quoting *Original Ballet Russe, Ltd. v. Ballet Theatre, Inc.*,
4 133 F.2d 187, 189 (2d Cir. 1943)). To comply with the Rule, a plaintiff must plead a short
5 and plain statement of the elements of his or her claim, “identifying the transaction or
6 occurrence giving rise to the claim and the elements of a prima facie case,” which elements,
7 of course, will vary depending on the species of claim being asserted. *See Bautista*, 216
8 F.3d at 840.

9 Here, the complaint is neither “short” nor “plain.” Even though some of its
10 pages improperly are not double-spaced, *see* CIV. L.R. 11-3.6, it is 55 pages long. But it
11 is not the complaint’s length *per se* that troubles the Court. What is troubling is how much
12 shorter the pleading could be without losing any clarity (although it likely would thereby
13 gain much). The Court refers Plaintiff to the admonitions of Circuit Judge Arthur Alarcón:

14
15 . . . Plaintiff must identify as a defendant only persons who personally
16 participated in a substantial way in depriving plaintiff of a federal
17 constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a
18 person subjects another to the deprivation of a constitutional right if he does
19 an act, participates in another’s act or omits to perform an act he is legally
20 required to do that causes the alleged deprivation). If plaintiff contends he
21 was the victim of a conspiracy, he must identify the participants and allege
22 their agreement to deprive him of a specific federal constitutional right.

23 . . .

24 Plaintiff’s claims must be set forth in short and plain terms, simply,
25 concisely and directly. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514,
26 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (“Rule 8(a) is the starting point of a
27 simplified pleading system, which was adopted to focus litigation on the
28 merits of a claim.”); FED. R. CIV. P. 8.

1 **Plaintiff must eliminate from plaintiff’s pleading all preambles,**
2 **introductions, argument, speeches, explanations, stories, griping,**
3 **vouching, evidence, attempts to negate possible defenses, summaries, and**
4 **the like.** *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996) (affirming
5 dismissal of § 1983 complaint for violation of Rule 8 after warning); *see*
6 *Crawford-El v. Britton*, 523 U.S. 574, 597, 118 S.Ct. 1584, 140 L.Ed.2d 759
7 (1998) (reiterating that “firm application of the Federal Rules of Civil
8 Procedure is fully warranted” in prisoner cases).

9 A district court must construe pro se pleading “liberally” to determine
10 if it states a claim and, prior to dismissal, tell a plaintiff of deficiencies in his
11 complaint and give a plaintiff an opportunity to cure them. *See Lopez v.*
12 *Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). However, the “[f]actual
13 allegations must be enough to raise a right to relief above the speculative level
14 on the assumption that all the allegations in the complaint are true (even if
15 doubtful in fact).” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555,
16 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (citations omitted).

17 **The court (and any defendant) should be able to read and**
18 **understand Plaintiff’s pleading within minutes.** *McHenry*, 84 F.3d at
19 1177. A long, rambling pleading, including many defendants with
20 unexplained, tenuous or implausible connection to the alleged constitutional
21 injury or joining a series of unrelated claims against many defendants very
22 likely will result in delaying the review required by 28 U.S.C. § 1915 and an
23 order dismissing plaintiff’s action pursuant to FED. R. CIV. P. 41 for violation
24 of these instructions.

25
26 *Clayburn v. Schirmer*, No. CIV S 06-2182 ALA P, 2008 WL 564958, slip op. at 3-4 (E.D.
27 Cal. Feb. 28, 2008) (Alarcón, Circuit J., sitting by designation) (**emphasis in bold added**).

1 What is a “short and plain” statement of a claim? The Ninth Circuit in
2 *McHenry*, one of the cases cited by Circuit Judge Alarcón above, illustrated this by quoting
3 from an official federal form, one for negligence, as follows:

4
5 The complaints in the official Appendix of Forms are dramatically short and
6 plain. For example, the standard negligence complaint consists of three short
7 paragraphs:

- 8
9 1. [Allegation of jurisdiction.]
10 2. On June 1, 1936, in a public highway called Boylston
11 Street in Boston, Massachusetts, defendant negligently drove a
12 motor vehicle against plaintiff, who was then crossing said
13 highway.
14 3. As a result plaintiff was thrown down and had his leg
15 broken, and was otherwise injured, was prevented from
16 transacting his business, suffered great pain of body and mind,
17 and incurred expenses for medical attention and hospitalization
18 in the sum of one thousand dollars.

19 Wherefore plaintiff demands judgment against defendant
20 in the sum of _____ dollars and costs.

21
22 FED. R. CIV.P. Form 9. This complaint fully sets forth who is being sued, for
23 what relief, and on what theory, with enough detail to guide discovery. It can
24 be read in seconds and understood in minutes.

25
26 *McHenry*, 84 F.3d at 1177. “By contrast,” the *McHenry* court lamented, “the complaint
27 in the case at bar is argumentative, prolix, replete with redundancy and largely irrelevant.
28 It consists largely of immaterial background information.” *Id.*

1 **B. Discussion**

2 Just so here. Instead of alleging the operative facts simply and without
3 argument, Plaintiff devotes much of the complaint to “preambles, introductions, argument,
4 speeches, explanations, stories, griping, vouching, evidence, attempts to negate possible
5 defenses, summaries, and the like.” Instead of beginning with the main point – “I was
6 falsely arrested on a rape accusation¹ that the defendants should have known was baseless,
7 then jailed in poor conditions,” for example – and then supporting the point factually,
8 Plaintiff circles and circles rhetorically, only coming to the main point dozens of pages
9 later, if at all. To cite only a few examples:

10 * Plaintiff introduces himself with the following two paragraphs better suited
11 to a social introduction than a legal complaint:

12
13
14
15
16 ¹ In contrast with Plaintiff, who appears never to indicate the stated basis for his arrest,
17 the California Court of Appeal got right to the point in discussing what happened to him – or a
18 person with the same name as Petitioner and similar predicament – in this June 2013 opinion:

19 Jose Manuel Lopez appeals from an order denying his petition made under
20 Penal Code section 851.8, to seal and destroy records and to find him factually
21 innocent. The decision made by the trial court was based on conflicting evidence.
22 It is the trial court’s duty, not ours, to decide credibility issues. We therefore affirm
23 the order.

24 **Defendant admittedly engaged in a sexual encounter with a woman he**
25 **had picked up at a bus stop. He claimed it was consensual; she denied consent.**
26 The trial court reviewed extensive documentation, permitted defendant, who
27 appeared in pro. per., to give an extensive unsworn statement, heard testimony of
28 defendant's brother, and thereafter ruled “there is reasonable cause that you were
arrested and reasonable cause that you are not factually innocent in the matter. So
your motion is denied.” The fact the district attorney declined to prosecute him does
not establish his factual innocence.

People v. Lopez, No. G047176, 2013 WL 2608698 (Cal. Ct. App. 4 Dist., June 12, 2013)
(emphasis added).

1 14. The Plaintiff In Pro Se Jose Manuel Lopez, is a 38 years
2 of age male who has enjoyed a life full of inner successes.
3 Reflective at being in promotion of education, good health,
4 prosperity, joy, moderation, fairness, equality and a pursuit of
5 happiness.

6 15. He is spiritual, has core beliefs and values in living
7 righteously. The plaintiff believes justice is correct and is law
8 abiding.

9
10 * Plaintiff frequently quotes lengthy, irrelevant passages from handbooks,
11 manuals, charters and similar tomes, thus wasting paper, ink and time. For example,
12 he devotes a full page of boilerplate to introducing the City of Santa Ana.
13 Apparently cribbing from the City's charter, he alleges that "The City has all other
14 rights, powers and privileges which are not prohibited by, or in conflict with, the
15 State Constitution or this charter and which it would be proper to specifically set
16 forth in this charter, even though such are not herein set forth." Comp. ¶ 8; *see*
17 *generally* Santa Ana, Cal., Ordinances Pt. I (Charter) (portion quoted is Pt. I, art. II,
18 § 200 (Powers of the City), available at [https://library.municode.com/HTML/
19 14452/level2/PTITHCH_ARTIIPOCI.html](https://library.municode.com/HTML/14452/level2/PTITHCH_ARTIIPOCI.html)). None of this has any relevance to any
20 claim against the City or any other Defendant.

21
22 * Plaintiff routinely applies opinionated labels to descriptions that are supposed
23 to be entirely factual. For example, in paragraph 25 of the complaint, Plaintiff
24 describes, in overlong, repetitive fashion, a communication he received in jail three
25 days after his arrest:

26
27 [T]he plaintiff received one . . . Inmate Message Slip dated
28 February 08, 201[2]. Indicating to the plaintiff that the only

1 reason. As to why the plaintiff was in the custody of the
2 Sheriff's Department. Was that the plaintiff's former Parole
3 Agent Jesse Ordaz. The State of California Department of
4 Corrections and Rehabilitation Was holding the plaintiff at
5 jail as a direct result of the defendant's [*sic*] *false* allegations
6 made against the plaintiff.
7

8 (Emphasis added.) Plaintiff does not explain how the allegations were false. He simply
9 states this conclusion. Worse, this paragraph raises more questions than it answers. Who
10 is "the defendant" who allegedly accused Plaintiff falsely? Plaintiff is not suing the
11 complaining witness who presumably reported a rape. Moreover, if Plaintiff asserts that
12 Parole Agent Ordaz *knew* Plaintiff to have been innocent yet had Plaintiff arrested anyway,
13 then why is Ordaz not among the defendants? But perhaps the most important question is
14 *why* Plaintiff pleads in this manner. Why, at the above-quoted point – only ten pages into
15 a 55-page complaint – has Plaintiff still not mentioned the word "rape" or otherwise stated
16 in any clear terms just what happened to him other than that he was falsely arrested for
17 nefarious reasons, for which several *unsued* persons are responsible, among others.

18 To avoid repetition of this kind of pleading, any First Amended Complaint
19 (1AC) shall not exceed 15 pages, exclusive of exhibits, and shall conform to the other
20 admonitions noted in this Order.
21

22 II.

23 **FAILURE TO STATE SEPARATE LEGAL CLAIMS (Claims 1 and 3)**

24 Even in *pro se* cases, plaintiffs must state their various claims, each
25 identifying a discrete alleged violation of the Constitution. *See Bautista v. Los Angeles*
26 *County*, 216 F.3d 837, 839-40 (9th Cir. 2000). Separating the complaint into discrete,
27 readily-identifiable claims serves the purpose of clarity:
28

1 Experience teaches that, unless cases are pleaded clearly and precisely, issues
2 are not joined, discovery is not controlled, the trial court's docket becomes
3 unmanageable, the litigants suffer and society loses confidence in the court's
4 ability to administer justice.

5
6 *Id.* at 840-41 (*quoting Anderson v. District Bd. of Trustees*, 77 F.3d 364, 367 (11th Cir.
7 1996)) (*citing* FED. R. CIV. P. 10(b) *and* JAMES W. MOORE, ET AL., MOORE'S FEDERAL
8 PRACTICE, § 10.03[2][a] (3d ed. 1997)).

9 Here, although Plaintiff's six claims are physically "separate," his first claim
10 is a many-headed hydra:

11
12 **FIRST CLAIM FOR RELIEF**

13 **42 U.S.C. § 1983**

14 **Denial of Rights Violation(s) [*sic*] of Eighth & Fourteenth Amendment**

15 **To The United States Constitution**

16 **Civil Rights Violations**

17 **Freedom of Speech, Assembly and Association**

18 **Freedom From Cruel and Unusual Punishment and From the State Occasioned**

19 **Harm**

20
21 He then devotes ten full pages – an astonishing indulgence, in light of the fact that Claim 1
22 already incorporates the preceding *25 pages* of loose factual allegations – to setting forth
23 essentially *the same story he just finished telling*: he was wrongfully arrested by a
24 conspiracy of government agents, threatened that he might spend a long time in prison,
25 kept in a Dickensian jail, and so on, and on.

26 Similarly, Plaintiff bases Claim 3 on not only the Equal Protection Clause but
27 also the Due Process Clause of the Constitution. Perhaps he can state a valid claim based
28 on each provision, but he must do so in separate claims.

1 In any amended complaint, Plaintiff must state *separate* claims for relief, each
2 including –

- 3 (1) a *single* civil right, not two or more, that defendant(s) allegedly violated, *e.g.*, the
4 right not to be subjected to Cruel and Unusual Punishment under the Eighth
5 Amendment; and
6 (2) *as to each count of each claim*, the specific events and other facts that give rise to,
7 and that make out a prima facie case of, *that specific claim*.

8 (In fairness to Plaintiff, he appears to limit Claims 2, 4, 5 and 6 to single legal bases.)
9

10 III.

11 OTHER INFIRMITIES APPEAR TO EXIST

12 Before concluding, the Court stresses that the foregoing flaws may not be an
13 exhaustive list. Indeed, the Court doubts that it is. (For example, although Claim 4 is
14 captioned as being based on *federal* due process concerns, Plaintiff’s supporting allegations
15 immediately turn to assertions that the *California* constitution was violated – and, later, to
16 yet another recitation that he suffered “cruel and unusual punishment.” *See* Comp. ¶¶ 113-
17 114, 117. Plaintiff must only assert legal claims for which he can allege sufficient specific
18 factual support, rather than venting his using quasi-legal terminology.) But the flaws
19 already noted, particularly the long and confusing nature of the complaint, make it
20 unreasonably difficult for the Court to screen for additional shortcomings.
21

22 IV.

23 CONCLUSION

24 Based on the foregoing, the Court hereby DISMISSES the complaint, and
25 leave to amend is granted. More specifically, Plaintiff has three options:

- 26 (1) **Plaintiff may pursue this action further** by filing an original and one copy of a
27 pleading captioned as his First Amended Complaint (1AC), bearing the current case
28 number, within 30 days of the filing date of this Order. To withstand another

1 dismissal, the 1AC must correct the deficiencies identified in this Order – including
2 the 15-page length limitation, among others – and must comply with the Federal
3 Rules of Civil Procedure and this Court’s Local Rules. The 1AC must be complete
4 in itself and must not refer to any prior version of the complaint.


5 (2) **Plaintiff may file a “Notice of Intent Not to Amend Complaint” within 30 days**
6 of the filing date of this Order. If Plaintiff timely files such a Notice, then the
7 undersigned will recommend to the assigned District Judge that this action be
8 dismissed, freeing Plaintiff to appeal the dismissal on the grounds cited above. *See*
9 *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1063-66 (9th Cir. 2004).

10 (3) **Plaintiff may do nothing** in response to this Order. If Plaintiff does not file a
11 document pursuant to either option 1 or 2 above within the 30-day deadline, then the
12 Court shall deem him to have consented to dismissal of this action for failure to
13 prosecute and for failure to comply with this Order. *See id.*

14 **The Court cautions Plaintiff that if he fails to file a timely amended**
15 **complaint or otherwise fails to comply substantially with the terms of this Order, then**
16 **this action may be dismissed.**

17 IT IS SO ORDERED.

18
19 DATED: September 10, 2014

20
21 

22 _____
23 RALPH ZAREFSKY
24 UNITED STATES MAGISTRATE JUDGE
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