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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. COE,

Plaintiff,

No. 1:07-cv-00683 ALA P

vs.

JAMES A. YATES,

Defendant.

ORDER

_____/

Plaintiff Michael Coe is a state prisoner proceeding pro se and in forma pauperis in this civil rights actions pursuant to 42 U.S.C. § 1983. On February 22, 2007, plaintiff filed a complaint alleging a violation of plaintiff’s constitutional rights. Review of that complaint finds that the named defendant is an employee of a governmental entity.

I

Pursuant to 28 U.S.C. § 1915A(a), when the litigant is a prisoner, the court must screen complaints brought against a governmental entity or officer or employee of a governmental entity. The court must dismiss the complaint if the claims contained in it, even when read broadly, are legally frivolous, malicious, fail to state a claim upon which relief may be granted, or seek money damages from a defendant who is immune from such relief. 28 U.S.C. § 915(A)(b). A claim “is frivolous [if] it lacks an arguable basis either in law or in fact.” *Neitzke*

1 *v. Williams*, 490 U.S. 319, 325 (1989). “At this stage of the litigation, [this court] must accept
2 [plaintiff’s] allegations as true.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). “A court
3 may dismiss a complaint only if it is clear that no relief could be granted under any set of facts
4 that could be proved consistent with the allegations.” *Id.*

5 “To sustain an action under section 1983, a plaintiff must show (1) that the conduct
6 complained of was committed by a person acting under color of state law; and (2) that the
7 conduct deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*,
8 466 F.3d 676, 689 (9th Cir. 2006).

9 II

10 Review of plaintiff’s complaint finds that the entire statement of his claim consists of one
11 paragraph. In that paragraph plaintiff claims that defendant “James A. Yates . . . allowed my
12 First and Eighth Amendment rights to be denied” and that defendant Yates “failed to intervene
13 (sic) and help reconcile the denial of my rights to practice my religion according to federal
14 mandate.” The court finds the allegations in plaintiff’s complaint so vague and conclusory that it
15 is unable to determine whether the current action is frivolous or fails to state a claim for relief.
16 The court has determined that the complaint does not contain a short and plain statement as
17 required by FED. R. CIV. P. 8(a)(2). Although the Federal Rules adopt a flexible pleading policy,
18 a complaint must give fair notice and state the elements of the claim plainly and succinctly.
19 *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege
20 with at least some degree of particularity overt acts which the defendant engaged in that support
21 plaintiff’s claim. *Id.* Because plaintiff has failed to comply with the requirements of FED. R.
22 CIV. P. 8(a)(2), the complaint must be dismissed. The court will, however, grant leave to file an
23 amended complaint.

24 III

25 To proceed plaintiff must file a first amended complaint. Any amended complaint must
26 show that the federal court has jurisdiction and that plaintiff’s action is brought in the right place,

1 that plaintiff is entitled to relief if plaintiff’s allegations are true, and must contain a request for
2 particular relief. Plaintiff must identify as a defendant only persons who personally participated
3 in a substantial way in depriving plaintiff of a federal constitutional right. *Johnson v. Duffy*, 588
4 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional
5 right if he does an act, participates in another’s act or omits to perform an act he is legally
6 required to do that causes the alleged deprivation). If plaintiff contends he was the victim of a
7 conspiracy, he must identify the participants and allege their agreement to deprive him of a
8 specific federal constitutional right.

9 In an amended complaint, the allegations must be set forth in numbered paragraphs. FED.
10 R. CIV. P. 10(B). Plaintiff may join multiple claims if they are all against a single defendant.
11 FED. R. CIV. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
12 occurrences, the claims must be set forth in separate paragraphs. FED. R. CIV. P. 10(b).

13 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d
14 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any
15 heightened pleading standard in cases other than those governed by Rule 9(b).”); FED. R. CIV. P.
16 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading).

17 Plaintiff’s claims must be set forth in short and plain terms, simply, concisely and
18 directly. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting
19 point of a simplified pleading system, which was adopted to focus litigation on the merits of a
20 claim.”); FED. R. CIV. P. 8.

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

1 A district court must construe pro se pleading “liberally” to determine if it states a claim
2 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give a plaintiff an
3 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). However,
4 the “[f]actual allegations must be enough to raise a right to relief above the speculative level on
5 the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Bell*
6 *Atlantic Corporation v. Twombly*, ___ U.S. ___, 127 S.Ct. 1995, 1965 (2007) (citations omitted).

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

13 An amended complaint must be complete in itself without reference to any prior
14 pleading. Local Rule 15-220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff
15 files an amended complaint, the original pleading is superseded.

16 Plaintiff is admonished that by signing an amended complaint he certifies he has made
17 reasonable inquiry and has evidentiary support for his allegations and that for violation of this
18 rule the court may impose sanctions sufficient to deter repetition by plaintiff or others. FED. R.
19 CIV. P. 11. Prison rules require plaintiff to obey all laws, including this one, and plaintiff may
20 be punished by prison authorities for violation of the court’s rules and orders. *See* 15 CAL.
21 ADMIN. CODE § 3005.

22 A prisoner may bring no § 1983 action until he has exhausted such administrative
23 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*
24 *v. Churner*, 532 U.S. 731, 741 (2001). Plaintiff is further admonished that by signing an
25 amended complaint he certifies his claims are warranted by existing law, including the law that
26 he exhaust administrative remedies, and that for violation of this rule plaintiff risks dismissal of

1 his action.

2 ////

3 **IV**

4 Therefore, IT IS HEREBY ORDERED that:

- 5 1. Plaintiff's February 22, 2007, complaint is dismissed; and
6 2. Plaintiff's is granted thirty-five (35) days from the date of this order to file a
7 first amended complaint. Failure to file a first amended complaint may result in dismissal.

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9 Dated: February 7, 2008

10 /s/ Arthur Alarcón
11 UNITED STATES CIRCUIT JUDGE
12 Sitting by Designation

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