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

Vanjilis Garafolo,)	No. CV 1-08-1371-GMS
Plaintiff,)	ORDER
vs.)	
M. Carrasco, et al.,)	
Defendants.)	

Plaintiff Vanjilis Garafolo, who is confined in the California Correctional Institution in Tehachapi, California, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. #1). This case was reassigned to the undersigned judge on November 24, 2008. The Court will dismiss the Complaint with leave to amend.

I. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). If the Court determines that a pleading could be cured by the allegation of other facts, a *pro se* litigant is entitled to an opportunity to amend a complaint

1 before dismissal of the action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000)
2 (*en banc*).

3 The Court should not, however, advise the litigant how to cure the defects. This type
4 of advice “would undermine district judges’ role as impartial decisionmakers.” Pliler v.
5 Ford, 542 U.S. 225, 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide
6 whether the court was required to inform a litigant of deficiencies). Plaintiff’s Complaint
7 will be dismissed with leave to amend because the Complaint may possibly be saved by
8 amendment.

9 Rule 8(a) of the Federal Rules of Civil Procedure requires a “short and plain statement
10 of the claim.” Fed. R. Civ. P. 8(a)(2). Rule 8(d)(1) states that “[e]ach allegation must be
11 simple, concise, and direct.” A complaint having the factual elements of a cause of action
12 scattered throughout the complaint and not organized into a “short and plain statement of the
13 claim” may be dismissed for failure to satisfy Rule 8(a). See Sparling v. Hoffman Constr.
14 Co., 864 F.2d 635, 640 (9th Cir. 1988); see also McHenry v. Renne, 84 F.3d 1172 (9th Cir.
15 1996). Rule 10(b) of the Federal Rules of Civil Procedure also requires a plaintiff to state
16 claims in “numbered paragraphs, each limited as far as practicable to a single set of
17 circumstances.” Fed. R. Civ. P. 10(b). Moreover, “[i]f doing so would promote clarity, each
18 claim founded on a separate transaction or occurrence . . . must be stated in a separate count.”
19 Fed. R. Civ. P. 10(b). It is not the responsibility of the Court to review a rambling narrative
20 in an attempt to determine the number and nature of a plaintiff’s claims.

21 Although Plaintiff has used a court-supplied form, the Court has reviewed Plaintiff’s
22 Complaint and concludes that it fails to comply with Rules 8 and 10 of the Federal Rules of
23 Civil Procedure. Plaintiff’s Complaint is nothing more than a lengthy narrative. The Court
24 cannot meaningfully review the Complaint, as required by 28 U.S.C. § 1915A(a).
25 Accordingly, the Court will dismiss the Complaint with leave to amend.

26 **II. Leave to Amend**

27 For the foregoing reasons, Plaintiff’s Complaint will be dismissed for failure to
28 comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Within 30 days,

1 Plaintiff may submit a first amended complaint on the form provided with this Order. If
2 Plaintiff fails to use the form provided with this Order, the Court may strike the amended
3 complaint and dismiss this action without further notice to Plaintiff.

4 Plaintiff must clearly designate on the face of the document that it is the “First
5 Amended Complaint.” The amended complaint must be retyped or rewritten in its entirety
6 on the form provided with this Order and may not incorporate any part of the original
7 Complaint by reference.

8 Plaintiff must comply with the instructions provided with the form. Plaintiff should
9 pay close attention to the instructions provided with the form. If Plaintiff fails to comply
10 with the instructions provided with the form, the Court may strike the amended complaint
11 and dismiss this action without further notice to Plaintiff.

12 Among other requirements contained in the instructions, Plaintiff must provide
13 information in an amended complaint regarding the Court’s jurisdiction and the defendants,
14 and he must **divide his lawsuit into separate counts**. In each count, Plaintiff must identify
15 the federal constitutional civil right¹ allegedly violated, check the box for the issue most
16 closely involved, state how each defendant participated in the alleged violation at issue,
17 explain how Plaintiff was injured by the alleged violation, and mark whether Plaintiff
18 exhausted any available administrative remedies. Plaintiff must repeat this process for each
19 civil rights claim. **Plaintiff may allege only one claim per count.**

22 ¹To establish that he was denied meaningful access to the courts, a plaintiff must
23 submit evidence showing that he suffered an “actual injury” as a result of the defendants’
24 actions. See Lewis v. Casey, 518 U.S. 343 (1996). An “actual injury” is “actual prejudice
25 with respect to contemplated or existing litigation, such as the inability to meet a filing
26 deadline or to present a claim.” Id. at 348. To show actual injury with respect to
27 contemplated litigation, the plaintiff must demonstrate that the conduct of the defendants
28 prevented him from bringing to court a nonfrivolous claim that he wished to present. Id. at
352-53. That nonfrivolous claim must be a direct or collateral attack on the inmate’s
sentence, or a challenge to the conditions of his confinement. Id. at 355. “Impairment of any
other litigating capacity is simply one of the incidental (and perfectly constitutional)
consequences of conviction and incarceration.” Id. (emphasis in original).

1 A first amended complaint supersedes the original complaint. Ferdik v. Bonzelet, 963
2 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542,
3 1546 (9th Cir. 1990). After amendment, the Court will treat an original complaint as
4 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in the original
5 complaint is waived if it is not raised in a first amended complaint. King v. Atiyeh, 814 F.2d
6 565, 567 (9th Cir. 1987).

7 **III. Motion for Appointment of Counsel**

8 On December 19, 2008, Plaintiff filed a Motion for Appointment of Counsel. There
9 is no constitutional right to appointment of counsel in a civil case. See Ivey v. Board of
10 Regents of University of Alaska, 673 F.2d 266 (9th Cir. 1982). The appointment of counsel
11 in a civil rights case is required only when exceptional circumstances are present. Aldabe
12 v. Aldabe, 616 F.2d 1089 (9th Cir. 1980); Wilborn v. Escalderon, 789 F.2d 1328 (9th Cir.
13 1986). “A finding of exceptional circumstances requires an evaluation of both ‘the
14 likelihood of success on the merits [and] the ability of the petitioner to articulate his claims
15 *pro se* in light of the complexity of the legal issues involved.’” Wilborn, 789 F.2d at 1331
16 (quoting Weygandt v. Look, 718 F.2d 952, 954 (9th Cir. 1983)). The Court must review both
17 of these factors together in deciding whether or not to appoint counsel. Id.

18 The Court has reviewed and evaluated the Complaint and finds this action presents
19 no “exceptional circumstances” requiring the appointment of counsel at this time. Plaintiff
20 is in no different a position than other *pro se* litigations who have brought nearly identical
21 claims. Accordingly, Plaintiff’s Motion for Appointment of Counsel (Doc. #10) will be
22 denied.

23 **IV. Warnings**

24 **A. Address Changes**

25 Plaintiff must file and serve a notice of a change of address in accordance with Rule
26 83-182(f) and 83-183(b) of the Local Rules of Civil Procedure. Plaintiff must not include
27 a motion for other relief with a notice of change of address. Failure to comply may result in
28 dismissal of this action.

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B. Copies

Plaintiff must submit an additional copy of every filing for use by the Court. See LRCiv 5-133(d)(2). Failure to comply may result in the filing being stricken without further notice to Plaintiff.

C. Possible Dismissal

If Plaintiff fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this action without further notice. See Ferdik, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order of the Court).

IT IS ORDERED:

(1) The Complaint (Doc. #1) is **dismissed** for failure to comply with Rules 8 and 10 of the Federal Rules of Civil Procedure. Plaintiff has **30 days** from the date this Order is filed to file an amended complaint in compliance with this Order.

(2) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice.

(3) Plaintiff's December 19, 2008 Motion for Appointment of Counsel (Doc. #10) is **denied**.

(4) The Clerk of Court must include with this Order a copy of this judge's required form for filing a civil rights complaint by a prisoner.

DATED this 18th day of February, 2009.



G. Murray Snow
United States District Judge