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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN D. HORTON,)	1:09-cv-01441-AWI-SMS
)	
Plaintiff,)	ORDER GRANTING PLAINTIFF'S
)	APPLICATION TO PROCEED IN FORMA
)	PAUPERIS (DOC. 2)
v.)	
)	ORDER DIRECTING SERVICE OF THE
SIERRA CONSERVATION CENTER,)	COMPLAINT (DOC. 1) ON DEFENDANT
)	
Defendant.)	ORDER DIRECTING THE CLERK TO
)	FORWARD SERVICE DOCUMENTS TO
)	PLAINTIFF

ORDER DIRECTING PLAINTIFF TO
SUBMIT SERVICE DOCUMENTS TO THE
COURT

ORDER DIRECTING THE CLERK TO
FORWARD ANY SERVICE DOCUMENTS
SUBMITTED BY PLAINTIFF TO THE
MARSHAL FOR SERVICE OF PROCESS

ORDER DIRECTING THE MARSHAL TO
SERVE THE COMPLAINT UPON RECEIPT
OF SERVICE DOCUMENTS

Plaintiff is proceeding pro se with an action for damages and other relief concerning alleged civil rights violations. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304.

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1 I. Application to Proceed in Forma Pauperis

2 Pending before the Court is Plaintiff's motion to proceed in
3 forma pauperis, filed on August 17, 2009.

4 Plaintiff has submitted a declaration that makes the showing
5 required by § 1915(a). Accordingly, the request to proceed in
6 forma pauperis IS GRANTED. 28 U.S.C. § 1915(a).

7 II. Screening the Complaint

8 A. Legal Standards

9 In cases wherein the plaintiff is proceeding in forma
10 pauperis, the Court is required to screen each case and shall
11 dismiss the case at any time if the Court determines that the
12 allegation of poverty is untrue, or the action or appeal is
13 frivolous or malicious, fails to state a claim on which relief
14 may be granted, or seeks monetary relief against a defendant who
15 is immune from such relief. 28 U.S.C. 1915(e) (2).

16 "Rule 8(a)'s simplified pleading standard applies to all
17 civil actions, with limited exceptions," none of which applies to
18 section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506,
19 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a
20 complaint must contain "a short and plain statement of the claim
21 showing that the pleader is entitled to relief...." Fed. R. Civ.
22 P. 8(a). "Such a statement must simply give the defendant fair
23 notice of what the plaintiff's claim is and the grounds upon
24 which it rests." Swierkiewicz, 534 U.S. at 512. Detailed factual
25 allegations are not required, but "[t]hreadbare recitals of the
26 elements of a cause of action, supported by mere conclusory
27 statements, do not suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937,
28 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544,

1 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set forth
2 "sufficient factual matter, accepted as true, to 'state a claim
3 that is plausible on its face.'" Iqbal, 129 S.Ct. at 1949
4 (quoting Twombly, 550 U.S. at 555). While factual allegations are
5 accepted as true, legal conclusions are not. Id. at 1949.

6 Determining whether a complaint states a plausible claim for
7 relief is generally "a context-specific task that requires the
8 reviewing court to draw on its judicial experience and common
9 sense." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950. However, "where
10 the well-pleaded facts do not permit the Court to infer more than
11 the mere possibility of misconduct," the complaint has not shown
12 that the pleader is entitled to relief. Ashcroft v. Iqbal, 129 S.
13 Ct. at 1950.

14 A claim has facial plausibility, "when the plaintiff pleads
15 factual content that allows the court to draw the reasonable
16 inference that the defendant is liable for the misconduct
17 alleged." Ashcroft v. Iqbal, -U.S. -, 129 S.Ct. 1937, 1949
18 (2009). "[F]or a complaint to survive a motion to dismiss, the
19 non-conclusory 'factual content,' and reasonable inferences from
20 that content, must be plausibly suggestive of a claim entitling
21 the plaintiff to relief." Moss v. U.S. Secret Service, 572 F.3d
22 962, 970 (9th Cir. 2009).

23 If the Court determines that the complaint fails to state a
24 claim, leave to amend should be granted to the extent that the
25 deficiencies of the complaint can be cured by amendment. Lopez v.
26 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Dismissal
27 of a pro se complaint for failure to state a claim is proper only
28 where it is obvious that the Plaintiff cannot prevail on the

1 facts that he has alleged and that an opportunity to amend would
2 be futile. Lopez v. Smith, 203 F.3d at 1128.

3 B. Plaintiff's Complaint

4 Plaintiff alleged that Defendant Sierra Conservation Center
5 of the California Department of Corrections hired him as a
6 librarian beginning in February 2007, treated him in a hostile
7 and disrespectful manner, and terminated him wrongfully in June
8 2007. Plaintiff was a Hispanic male over the age of forty years
9 who had a Master's degree in library science from the University
10 of Oklahoma and who was treated differently in employment than a
11 similarly situated white, female employee who was under the age
12 of forty years would be treated. Plaintiff alleges that he was
13 treated in a discriminatory manner from the beginning of
14 employment because of his ethnic background, gender, and age of
15 over forty years; his white, female, under-forty supervisor did
16 not treat him with dignity or respect and constantly interfered
17 with the operations of the library; in contrast, she never
18 directly intervened in the classroom management of other faculty
19 who were white, female, and under forty. Plaintiff was terminated
20 for the stated reasons of having received a traffic ticket away
21 from work and having omitted from the employment application
22 probationary employment, an omission which Plaintiff alleges was
23 authorized by the California State Personnel Board, but Plaintiff
24 further alleges that he was terminated because he was Hispanic,
25 male, and over the age of forty years, and a white female under
26 forty would not have been terminated for such reasons. Plaintiff
27 alleges that he was deprived of the opportunity to continue his
28 employment and was gravely humiliated by not being treated like

1 other employees of the defendant, and he seeks any all just,
2 legal and equitable relief that the Court can provide.

3 It was held in Swierkewicz v. Sorema N.A., 534 U.S. 506, 514
4 (2002) that a complaint that alleged that the plaintiff had been
5 terminated on account of his national origin in violation of
6 Title VII and on account of his age in violation of the ADA, and
7 which detailed the events leading to his termination, such as
8 pertinent dates and data concerning some of the persons involved
9 in the termination, gave adequate notice of the claims and
10 grounds and stated a claim upon which relief could be granted.
11 Since then the notice pleading standards have been further
12 refined in terms of the plausibility inquiry.

13 However, a fair reading of the complaint in the instant case
14 results in a reasonable inference that Defendant Sierra
15 Conservation Center is a state governmental entity engaged in an
16 industry affecting commerce with fifteen or more employees in
17 each working day in each of twenty or more calendar weeks in the
18 current or preceding year; Defendant thus appears to qualify as
19 an employer within the scope of the statute. 42 U.S.C. §
20 2000e(b); Dothard v. Rawlinson, 433 U.S. 321 (1977).

21 Further, Plaintiff has alleged sufficient facts to warrant
22 an inference that the employer discriminated against Plaintiff,
23 who was qualified for the job, in the terms and conditions of
24 employment on the prohibited bases of gender, race, or national
25 origin within the meaning of 42 U.S.C. § 2000e-2.

26 The Court concludes that Plaintiff has alleged facts that
27 might support a claim entitling him to relief. Because the Court
28 has examined Plaintiff's complaint sufficiently to determine that

1 the entire action does not fail to state a claim, is not
2 frivolous, and does not merely state a claim against a defendant
3 who is immune from relief, the Court will not further analyze
4 Plaintiff's federal or state claims.

5 III. Service of the Complaint

6 The Court will direct that the complaint be served on
7 Defendant Sierra Conservation Center.

8 A. Directions to the Marshal

9 Accordingly, when appropriate service documents are
10 submitted to the Court and forwarded to the Marshal, the United
11 States Marshal SHALL SERVE the complaint.

12 B. Directions to the Clerk and to Plaintiff

13 Service IS appropriate for the following defendant: Sierra
14 Conservation Center.

15 Accordingly,

16 1) The Clerk of the Court shall send Plaintiff one USM-285
17 form, one summons, an instruction sheet, a notice of submission
18 of documents, and two copies of the complaint filed in this
19 Court.

20 2) Within thirty days from the date of service of this
21 order, Plaintiff shall complete the attached Notice of Submission
22 of Documents and submit the completed Notice to the Court with
23 the following documents:

- 24 a. Completed summons;
- 25 b. One completed USM-285 form for each defendant
26 listed above; and
- 27 c. Two copies of the endorsed complaint filed in
28 this Court.

1 Plaintiff need not attempt service on defendants and need
2 not request waiver of service.

3 Upon receipt of the documents described above, the Clerk of
4 the Court SHALL FORWARD them to the United States Marshal to
5 serve the above-named defendants pursuant to Federal Rule of
6 Civil Procedure 4 without payment of costs.

7 **Plaintiff's failure to comply with this order will**
8 **result in a recommendation to dismiss this action for**
9 **failure to obey this Court's order. Local Rule 11-110.**

10

11 IT IS SO ORDERED.

12 Dated: September 11, 2009

/s/ Sandra M.

Snyder

UNITED STATES MAGISTRATE JUDGE

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