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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ANTHONY ARCEO,

CASE NO. 1:10-cv-00427 GSA PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO FILE AMENDED COMPLAINT
WITHIN THIRTY DAYS

v.

DR. SMITH, et al.,

(ECF No. 1)

Defendants.

Screening Order

I. Screening Requirement

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner 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). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
4 plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a).
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

11 **II. Plaintiff’s Claims**

12 The events at issue in this action occurred at the Sierra Conservation Center in Jamestown,
13 where Plaintiff is currently incarcerated. Plaintiff names as defendants the following individuals:
14 Dr. Smith, M.D.; Dr. Imperial, M.D.; Dr. Krpan, M.D.; Dr. Allen, M.D.; Dr. St. Clair, M.D. F.
15 Chavez; Susan Hubbard.

16 Plaintiff’s complaint is 49 pages long and sets forth claims regarding the conditions of
17 Plaintiff’s confinement. Although not alleged as discrete and separate claims, the narrative of
18 Plaintiff’s complaint reveals claims of inadequate medical care, discrimination, visitation, religious
19 freedom, and claims under the Americans with Disabilities Act (ADA).

20 **A. Rule 18**

21 Pursuant to Federal Rule of Civil Procedure 18(a), “A party asserting a claim to relief as an
22 original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or
23 alternate claims, as many claims, legal equitable, or maritime, as the party has against an opposing
24 party.” Thus multiple claims against a single party are permissible, but Claim A against Defendant
25 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against
26 different defendants belong in different suits, not only to prevent the sort of morass (a multiple claim,
27 multiple defendant) suit produces, but also to ensure that prisoners pay the required filing fees. The
28 Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner

1 may file without the prepayment of the required fees. 28 U.S.C. § 1915(g). George v. Smith, 507
2 F.3d 605, 607 (7th Cir. 2007).

3 Plaintiff's complaint is voluminous and includes multiple unrelated claims against differing
4 defendants. While it appears that Plaintiff may be able to state at least one cognizable claim, he
5 clearly violates Rule 18(a) by including multiple unrelated claims in this single filing. Plaintiff will
6 be given an opportunity to file a first amended complaint under this case number, wherein he is
7 directed to plead/allege only related claims. All unrelated claims should be brought in separate suits.
8 Plaintiff is advised that if he chooses to file a first amended complaint, and fails to comply with Rule
9 18(a), the Court will count all frivolous/noncognizable unrelated claims that are dismissed as strikes,
10 such that Plaintiff may be barred from filing in forma pauperis in the future.

11 **B. ADA Claim**

12 Plaintiff's claims appear to stem from his allegations of violations of the ADA, which
13 "prohibit[s] discrimination on the basis of disability." Lovell v. Chandler, 303 F.3d 1039, 1052 (9th
14 Cir. 2002). "To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a
15 qualified individual with a disability; (2) [he] was excluded from participation in or otherwise
16 discriminated against with regard to a public entity's services, programs, or activities; and (3) such
17 exclusion or discrimination was by reason of [his] disability." Lovell, 303 F.3d at 1052.

18 Plaintiff has not alleged any facts with support a claim for violation of the ADA. The bulk
19 of Plaintiff's allegations relate to his treatment for HCV. The treatment or lack of medical treatment
20 for Plaintiff's condition does not provide a basis upon which to impose liability. Burger v.
21 Bloomberg, 418 F.3d 882 (8th Cir. 2005) (medical treatment decisions not basis for ADA claims);
22 Fitzgerald v. Corr. Corp. of Am., 403 F.3d 1134, 1144 (10th Cir. 2005) (medical decisions not
23 ordinarily within the scope of the ADA); Bryant v. Madigan, 84 F.3d 246, 249 (7th Cir. 1996) ("The
24 ADA does not create a remedy for medical malpractice."). Aside from Defendants' medical
25 treatment decisions of which Plaintiff complains and which are not an appropriate basis upon which
26 to predicate an ADA claim, Plaintiff alleges no facts to show that any named Defendant participated
27 in, or was otherwise responsible for, excluding him from numerous activities, programs, and benefits
28 otherwise available to him. Therefore, Plaintiff fails to state a cognizable claim for violation of his

1 rights under Title II of the ADA.

2 **III. Conclusion and Order**

3 The Court has screened Plaintiff's complaint and finds that it does not state any claims upon
4 which relief may be granted under section 1983 or the ADA. The Court will provide Plaintiff with
5 the opportunity to file an amended complaint curing the deficiencies identified by the Court in this
6 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may
7 not change the nature of this suit by adding new, unrelated claims in his amended complaint.
8 George, 507 F.3d at 607 (no "buckshot" complaints).

9 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
10 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,
11 Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must be
12 [sufficient] to raise a right to relief above the speculative level" Bell Atlantic Corp. v.
13 Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

14 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
15 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
16 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
17 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an original
18 complaint which are not alleged in an amended complaint are waived." King, 814 F.2d at 567 (citing
19 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
20 1474.

21 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 22 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
- 23 2. The Clerk's Office shall send to Plaintiff a complaint form;
- 24 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
25 amended complaint;
- 26 4. Plaintiff may not add any new, unrelated claims to this action via his amended
27 complaint and any attempt to do so will result in an order striking the amended
28 complaint; and

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5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: December 8, 2011

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE