

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SUSAN MAE POLK,

Plaintiff,

v.

M. LATTIMORE, et al.,

Defendants.

Case No. 1:12-cv-01156-DAD-BAM-PC

FINDINGS AND RECOMMENDATIONS
THAT THIS ACTION BE DISMISSED FOR
FAILURE TO STATE A CLAIM AND
FAILURE TO COMPLY WITH RULE 8
AND 18

OBJECTIONS DUE IN FOURTEEN DAYS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Currently before the Court is Plaintiff's April 15, 2015, fourth amended complaint.

I.

PROCEDURAL HISTORY

This action was initiated by civil complaint filed on July 16, 2012. (ECF No. 1.) The original complaint was thirty-five pages long, and named fifteen defendants. The complaint was a rambling narrative, referencing allegations of being placed in protective custody, conditions of confinement, and being pepper-sprayed. On September 20, 2012, Plaintiff filed a first amended complaint, as a matter of right, pursuant to Federal Rule of Civil Procedure 15(a). (ECF No. 8.) On September 17, 2013, an order was entered, dismissing the first amended complaint and

1 granting Plaintiff leave to file a second amended complaint. (ECF No. 20.) The first amended
2 complaint described incidents which allegedly occurred during a two year period from July 2007
3 through September 2009. The gravamen of Plaintiff's first amended complaint was that she
4 repeatedly told prison officials about her safety concerns, which were ignored, and was
5 repeatedly placed in harm's way, threatened and attacked by other inmates, wrongly accused of
6 rules violations, pepper-sprayed by correctional officers, denied adequate medical care for
7 injuries, and subjected to an improper inmate grievance process. Plaintiff was advised that her
8 complaint failed to comply with the requirements of Federal Rule of Civil Procedure 8(a)'s
9 requirement that Plaintiff set forth a short and plain statement of her claim. The first amended
10 complaint was also in violation of Rule 18(a)'s requirement that the first amended complaint
11 include only unrelated claims. Plaintiff was provided with the applicable legal standards for
12 excessive force and failure to protect Plaintiff in violation of the Eighth Amendment, retaliation
13 in violation of the First Amendment, violations of the Fourteenth Amendment Due Process
14 clause, violations of the Equal Protection clause, appeals process, verbal threats, and state law
15 claims. Plaintiff was granted leave to file a second amended complaint. Plaintiff was
16 specifically directed to file a second amended complaint that did not exceed twenty-five pages in
17 length. On November 8, 2013, Plaintiff filed a second amended complaint that exceeded twenty-
18 five pages. (ECF No. 28.) On November 15, 2013, an order was entered, striking the second
19 amended complaint on the ground that it violated the order directing her to file a second
20 amended complaint that complied with Rule 8(a), Rule 18(a), and did not exceed twenty-five
21 pages in length. (ECF No. 31.) On December 2, 2013, Plaintiff filed a third amended complaint.
22 (ECF No. 34.) Although Plaintiff limited her allegations in the third amended complaint to
23 twenty-five pages, she named more than forty-five defendants, alleging that multiple defendants
24 were responsible for multiple misdeeds, which were set forth in largely conclusory fashion
25 without sufficient facts. Plaintiff brought unrelated claims against defendants at three different
26 correctional institutions – the Contra Costa County Jail, Valley State Prison for Women, and the
27 Central California Women's Facility. Plaintiff alleged that defendants retaliated against her,
28 fabricated reports against her, falsely classified her as a mental patient, deterred her from

1 pursuing litigation, confiscated her personal property, harassed and intimidated her,
2 discriminated against her, and disrupted her court appearances. On June 19, 2014, an order was
3 entered, dismissing the third amended complaint for violations of Rule 8(a) and 18(a), with leave
4 to file a fourth amended complaint. Plaintiff was again provided with the appropriate legal
5 standards, and directed to file a fourth amended complaint that did not exceed twenty-five pages
6 in length. Plaintiff was specifically advised that if she did so, the fourth amended complaint
7 would be stricken from the record. On April 15, 2015, following requests for extensions,
8 Plaintiff filed the fourth amended complaint which is now before the Court. (ECF No. 66.)

9 **II.**

10 **FOURTH AMENDED COMPLAINT**

11 Plaintiff's fourth amended complaint exceeds the twenty-five page limit set forth in the
12 order dismissing the third amended complaint. Further, the fourth amended complaint names
13 sixty six individual defendants, and six separate causes of action. Plaintiff identifies her causes
14 of action as follows: 1) Conspiracy; 2) Retaliation (deprivation of protection from violence); 3)
15 Retaliatory pepper-spraying and write-ups; 4) Retaliatory stigmatization, threats, intimidation; 5)
16 Retaliatory write-ups and denial of legal resources; 6) Retaliatory obfuscation of CCWF
17 grievances.

18 **III.**

19 **COMPLAINT ALLEGATIONS**

20 Plaintiff re-states the rambling, narrative allegations in the fourth amended complaint
21 that she did in the original complaint, first amended complaint and third amended complaint.
22 Although the fourth amended complaint is difficult to follow, the Court can discern the following
23 allegations: conspiracy allegations regarding the conduct of Contra Costa County Jail officials in
24 from 2002 through 2005; allegations regarding Plaintiff's underlying criminal prosecution in
25 2005; allegations of being forced into a cell by other inmates in 2007; allegations that Valley
26 State Prison for Women (VSPW) officials housed Plaintiff in a cell with a mentally ill inmate in
27 2007; a campaign of harassment and retaliation upon Plaintiff's arrival at VSPW in 2007;
28 unspecified instances of racially charged incidents, including the use of racial epithets in 2007;

1 placement in administrative segregation (AdSeg) and conditions of confinement in AdSeg in
2 2007; improper housing in an 8 person cell in 2007; improper reassignment to a cell under false
3 pretenses in 2007.

4 Plaintiff alleges that from December of 2008 to June of 2009, she was placed in AdSeg
5 before being transferred back to VSPW and moved from room to room as inmates battered her in
6 each cell. Plaintiff alleges vague, unspecified threats of violence. Plaintiff references her right
7 to refuse assignment to the Mental Health Delivery System (MHSDS). Plaintiff lists 29 of the 66
8 Defendants, and asserts a conclusory allegation that they retaliated against her and chilled the
9 exercise of her First Amendment rights. Plaintiff makes vague references to false allegations and
10 incitements to violence, as well as a conspiracy to issue disciplinary charges on unjustified
11 charges of refusal to double-cell. Plaintiff alleges that on an unspecified date, several of the
12 Defendants did not allow her to present written documentation at a hearing. Plaintiff makes
13 vague allegations of retaliation for complaining about due process violations. Plaintiff refers to
14 the various ethnicities of several of the Defendants, and alleges that, in response to a different
15 lawsuit pursued by Plaintiff, they colluded to inhibit her law library access. Plaintiff specifically
16 alleges that they did so with discriminatory intent.

17 IV.

18 DISCUSSION

19 A. Statute of Limitations

20 The Court is required to screen complaints brought by prisoners seeking relief against a
21 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
22 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
23 legally “frivolous or malicious,” that “fail to state a claim on which relief may be granted,” or
24 that “seek monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
25 1915(e)(2)(B). A claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by
26 the applicable statute of limitations only when “the running of the statute is apparent on the face
27 of the complaint.” Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969
28 (9th Cir. 2010) (quoting Huynh v. Chase Manhattan Bank, 465 F.3d 992, 1003-04 (9th Cir.

1 2006), cert. denied, 131 S.Ct. 3055 (2011). “A complaint cannot be dismissed unless it appears
2 beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the
3 claim.” Von Saher, 592 F.3d at 969 (quoting Supermail Cargo, Inc. v. U.S., 68 F.3d 1204, 1206
4 (9th Cir., 1995)).

5 Federal law determines when a claim accrues, and “[u]nder federal law, a claim accrues
6 when the plaintiff knows or should know of the injury that is the basis of the cause of action.”
7 Douglas v. Noelle, 567 F.3d 1103, 1109 (9th Cir. 2009)(citation omitted); Maldonado v. Harris,
8 370 F.3d 945, 955 (9th Cir. 2004); Fink v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999). Because
9 section 1983 contains no specific statute of limitations, federal courts should apply the forum
10 state’s statute of limitations for personal injury actions. Jones v. Blanas, 393 F.3d 918, 927 (9th
11 Cir. 2004); Maldonado, 370 F.3d at 954; Fink, 192 F.3d at 914. California’s statute of
12 limitations for personal injury actions was extended to two years effective January 1, 2003. Cal.
13 Civ. Proc. Code § 335.1; Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954-55.

14 In actions where the federal court borrows the state statute of limitations, courts should
15 also borrow all applicable provisions for tolling the limitations found in state law. Jones, 393
16 F.3d at 927. Under California law, prisoners who at the time the cause of action accrued were
17 either imprisoned on a criminal charge or serving a sentence of less than life for a criminal
18 conviction benefit from a two-year tolling provision for damages actions. Cal. Civ. Proc. Code §
19 352.1. The complaint in this action was filed on July 16, 2012 (ECF No. 1.) Plaintiff alleges in
20 her fourth amended complaint that she is serving a sixteen year sentence. Any claims that
21 occurred prior to July 16, 2008, are therefore time-barred. It is apparent that Plaintiff’s claims
22 from 2007 and dates prior are barred by the applicable statute of limitations.

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 **B. Rules 8(a) and 18(a)**

2 Further, Plaintiff's fourth amended complaint fails for a clear violation of Rule 8(a) and
3 18(a) and 20(a) of the Federal Rules of Civil Procedure. As noted above in the procedural
4 history, Plaintiff was twice provided guidance in the form for Rule 18(a)'s requirements, and
5 Rule 8(a)'s requirement to include a short and plain statement of her claim. Plaintiff may not
6 proceed in this action on a myriad of unrelated claims against different staff members at different
7 institutions in a single action. Fed. R. Civ. P. 18(a), 20(a)(2) (joinder of defendants not permitted
8 unless both commonality and same transaction requirements are satisfied). Plaintiff's second
9 amended complaint and fourth amended complaint are both in violation of the Court's order to
10 limit her complaint to twenty-five pages or less. Plaintiff's fourth amended complaint, in
11 addition to violating, for the second time, the Court's direction to file a complaint in less than
12 twenty-five pages, names twenty-one additional Defendants.

13 Plaintiff was previously notified of the applicable legal standards regarding all of her
14 potential claims, and was twice advised of the deficiencies in her pleadings, and despite guidance
15 from the Court, Plaintiff's fourth amended complaint is largely identical to the original
16 complaint, second amended complaint, and third amended complaint. Unrelated claims against
17 different defendants must be pursued in multiple lawsuits. Based upon the allegations in
18 Plaintiff's original and first, second, third and fourth amended complaints, the Court is persuaded
19 that Plaintiff is unable to comply with Rule 8(a) or 18(a), and further amendment would be futile.
20 See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave
21 to amend when amendment would be futile.") Based on the nature of the deficiencies at issue,
22 the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122,
23 1130 (9th. Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

24 **C. Failure to Obey a Court Order**

25 Plaintiff was twice cautioned that her failure to comply with Court orders would result in
26 a recommendation that this action be dismissed for her failure to obey a court order. (ECF No. 20
27 at 16:18, ECF No. 42 at 9:16.) The Court has the inherent power to control its docket and may,
28 in the exercise of that power, impose sanctions where appropriate, including dismissal of the

1 to obey a court order.

2 These findings and recommendations will be submitted to the United States District
3 Judge assigned to the case, pursuant to the provision of Title 28 U.S.C. §636 (b)(1)(B). Within
4 **fourteen (14)** days after being served with these Finding and Recommendations, the parties may
5 file written objections with the Court. The document should be captioned “Objections to
6 Findings and Recommendations.” The parties are advised that failure to file objections within
7 the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d
8 F.3d 834, 838-39 (9th Cir. 2014)(citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

9
10 IT IS SO ORDERED.

11 Dated: May 3, 2016

12 /s/ Barbara A. McAuliffe
13 UNITED STATES MAGISTRATE JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28