

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ISABEL TUBACH,

1:12-cv-01241-AWI-SMS (PC)

Plaintiff,

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

v.

(Doc. 1)

GUZMAN,

RESPONSE DUE WITHIN THIRTY DAYS

Defendant.

I. SCREENING ORDER

Plaintiff, Isabel Tubach ("Plaintiff"), is a state prisoner who is currently proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On July 20, 2012, Plaintiff filed the Complaint which is before the Court for screening. (Doc. 1.)

A. Screening Requirement

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. §

1 1915(e)(2)(B)(ii).

2 **B. Summary of Plaintiff's First Amended Complaint**

3 Plaintiff complains of acts that occurred at Central California Women's Facility -- where
4 she currently resides. Plaintiff names Correctional Officer M. Guzman as the only defendant in
5 this action. (Doc. 1, Compl., pp. 1-3.) Plaintiff seeks injunctive relief. (Id., at pg. 3.)

6 Plaintiff alleges that she is "being murdered by Defendant M. Guzman." (Id.)
7 Generally, she alleges that Defendant Guzman is attempting to murder her by sending various
8 individuals (both correctional staff and other inmates) to engage in harassing acts against her.
9 Such acts allegedly include, but are not limited to rape, sodomy, abuse, and placing toxins in
10 Plaintiff's bodily orifices. Plaintiff alleges that Defendant Guzman's acts have caused her to
11 have ten heart attacks and three strokes. This is the best distillation of Plaintiff's allegations that
12 the Court is able to make from her rambling, disjointed, and at times incoherent writings in the
13 Complaint.

14 As discussed below, Plaintiff may be able to amend to correct the deficiencies in her
15 pleading to state cognizable claims. Thus, Plaintiff is given the standards which appear
16 applicable based on her allegations¹ and leave to file a first amended complaint.

17 **C. Pleading Requirements**

18 **1. Federal Rule of Civil Procedure 8(a)**

19 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
20 exceptions," none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
21 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). Pursuant to Rule 8(a), a complaint must contain "a
22 short and plain statement of the claim showing that the pleader is entitled to relief" Fed. R.
23 Civ. Pro. 8(a). "Such a statement must simply give the defendant fair notice of what the
24 plaintiff's claim is and the grounds upon which it rests." Swierkiewicz, 534 U.S. at 512.
25 However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations."
26 Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). "[A] liberal interpretation of a civil rights

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28 ¹ Plaintiff does not state which of her constitutional rights she feels were violated by any of the allegations in the Complaint. If the claims Plaintiff intended to pursue are not addressed, she has no one but herself to blame.

complaint may not supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) *quoting* Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

“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). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2).

Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), *quoting* Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Iqbal, 556 U.S. at 678, *quoting* Twombly, 550 U.S. at 555. While factual allegations are accepted as true, legal conclusion are not. Iqbal at 678; *see also* Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009); Twombly, 550 U.S. at 556-557. While “plaintiffs [now] face a higher burden of pleadings facts . . .,” Al-Kidd v. Ashcroft, 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally and are afforded the benefit of any doubt. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010). However, courts are not required to indulge unwarranted inferences. Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

If she chooses to file a first amended complaint, Plaintiff should endeavor to make it as concise as possible. She should merely state which of her constitutional rights she feels were violated by each named defendant and its factual basis.

2. Linkage Requirement

The Civil Rights Act under which this action was filed provides:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

1 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link
2 between the actions of the defendants and the deprivation alleged to have been suffered by
3 Plaintiff. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*,
4 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the
5 deprivation of a constitutional right, within the meaning of section 1983, if he does an
6 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
7 legally required to do that causes the deprivation of which complaint is made.” *Johnson v.*
8 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). In order to state a claim for relief under section 1983,
9 Plaintiff must link each named defendant with some affirmative act or omission that
10 demonstrates a violation of Plaintiff’s federal rights.

11 While Plaintiff identifies Defendant Guzman as the only named defendant in this action,
12 she references a number of other correctional staff throughout the Complaint. Plaintiff must
13 clarify which individuals she feels are responsible for each violation of her constitutional rights,
14 the factual basis for her claims, and must specify which individual(s) she mentions as a
15 defendant and which individual(s) she mentions solely for background purposes as her
16 Complaint must put each individual named as a defendant on notice of Plaintiff’s claims against
17 him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004).

18 **3. Federal Rule of Civil Procedure 18(a)**

19 Fed.R.Civ.P. 18(a) states that “A party asserting a claim to relief as an original claim,
20 counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate
21 claims, as many claims, legal, equitable, or maritime, as the party has against an opposing
22 party.” “Thus multiple claims against a single party are fine, but Claim A against Defendant 1
23 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against
24 different defendants belong in different suits, not only to prevent the sort of morass [a multiple
25 claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required
26 filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or
27 appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. §
28 1915(g).” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

Plaintiff is advised that claims are not related simply because she alleges the same type of constitutional violation(s) (i.e. retaliation) against multiple defendants. Claims are related where they are based on the same precipitating event, or a series of related events caused by the same precipitating event. Plaintiff is advised that if she chooses to file a first amended complaint and fails to comply with Rule 18(a) all unrelated claims will be stricken.

4. Duplicity of Claims

“Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.” Adams v. California Dept. of Health Services, 487 F.3d 684, 688 (9th Cir. 2007) *quoting* Walton v. Eaton Corp., 563 F.2d 66, 70 (3rd Cir. 1997); *ref* Curtis v. Citibank, N.A., 226 F.3d 133, 138–39 (2nd Cir. NY 2000); Serlin v. Arthur Andersen & Co., 3 F.3d 221, 223–24 (7th Cir.1993); Oliney v. Gardner, 771 F.2d 856, 859 (5th Cir.1985); Zerilli v. Evening News Ass’n, 628 F.2d 217, 222 (D.C.Cir.1980); Sutcliffe Storage & Warehouse Co. v. United States, 162 F.2d 849, 851 (1st Cir.1947). It is noted that Plaintiff has thirty actions pending in either the Fresno or Sacramento Divisions of this court.² It is further noted that Defendant Guzman is named as a defendant in almost all of Plaintiff’s pending actions; that she has alleged similar, if not identical, claims against him in each action that she has named him in; and that she fails to allege specific dates of incident in the vast majority of her actions – including the case at bar.

Thus, if Plaintiff chooses to file an amended complaint to attempt to proceed against Defendant Guzman in this action, she should be specific enough in her allegations for the Court

² Judicial notice is taken that Plaintiff has a total of thirty actions currently pending both in the Fresno and Sacramento Divisions of the Eastern District of California. United States v. 14.02 Acres of Land More or Less in Fresno County, 547 F.3d 943, 955 (9th Cir. 2008); United States v. Howard, 381 F.3d 873, 876, n.1 (9th Cir. 2004). Those actions are the subject of the cases numbered as follows: 1:11-cv-02117-SMS(PC); 1:12-cv-00360-AWI-SMS(PC); 1:12-cv-00451-SMS(PC); 1:12-cv-00635-SMS(PC); 1:12-cv-00649-SMS(PC); 1:12-cv-00872-AWI-SMS(PC); 1:12-cv-01110-SMS(PC); 1:12-cv-01111-SMS(PC); 1:12-cv-01241-AWI-SMS(PC); 1:12-cv-01276-AWI-SMS(PC); 1:12-cv-01369-SMS(PC); 1:12-cv-01373-SMS(PC); 1:12-cv-01389-SMS(PC); 1:12-cv-01573-SMS(PC); 1:12-cv-01574-SMS(PC); 1:12-cv-01696-AWI-SMS(PC); 1:12-cv-01768-AWI-SMS(PC); 1:12-cv-01798-AWI-SMS(PC); 1:12-cv-01878-AWI-SMS(PC); 1:12-cv-01879-AWI-SMS(PC); 1:12-cv-02023-AWI-SMS(PC); 1:13-cv-00020-AWI-SMS(PC); 1:13-cv-00068-AWI-SMS(PC); 1:13-cv-00089-AWI-SMS(PC); 1:13-cv-00200-AWI-SMS(PC); 1:13-cv-00201-AWI-SMS(PC); 2:12-cv-02942-AC(PC); 2:13-cv-00198-WBS-CKD(PC); 2:13-cv-00376-DAD(PC); and 2:11-cv-03385-EFB(PC).

1 and any opposing party to differentiate her allegations against Defendant Guzman in this action
2 from the others that she has pending. *Plaintiff is also directed to include specific dates of*
3 *injury as to each instant she feels any named defendant violated her constitutional rights.*
4 This is necessary both to address serious questions of duplicity and for statutes of limitations
5 purposes.

6 **D. Claims for Relief**

7 **1. Eighth Amendment – Cruel & Unusual Punishment**

8 Plaintiff appears to allege that Defendant Guzman is subjecting her to cruel and unusual
9 punishment in violation of the Eight Amendment.

10 “The treatment a prisoner receives in prison and the conditions under which he is
11 confined are subject to scrutiny under the Eighth Amendment.” Farmer v. Brennan, 511 U.S.
12 825, 832 (1994) (citing Helling v. McKinney, 509 U.S. 25, 31 (1993)). Prison officials have a
13 duty to take reasonable steps to protect inmates from physical abuse. Farmer, 511 U.S. at 833;
14 Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir. 1982). To establish a violation of this duty,
15 the prisoner must establish that prison officials were “deliberately indifferent to a serious threat
16 to the inmates’s safety.” Farmer, at 834. Being violently assaulted in prison is simply not ‘part
17 of the penalty that criminal offenders pay for their offenses against society.’ “ Farmer v.
18 Brennan, 511 U.S. 825, 834 (1994). Plaintiff alleges that, at Defendant Guzman’s direction, she
19 has been repeatedly raped, sodomized, and had others “put” toxins on or in her. While
20 Plaintiff’s accusations involve serious offenses, they are without factual detail and amount to
21 nothing more than sweeping, conclusory allegations that do not suffice to state a cognizable
22 claim. *See Iqbal*, 556 U.S. at 678. Further, “[w]here a complaint pleads facts that are ‘merely
23 consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and
24 plausibility of “entitlement to relief.” ’ ” *Id.* (quoting *Twombly*, 550 U.S. at 557).

25 Plaintiff’s allegations against Defendant Guzman are not facially plausible as they are
26 not supported by specific facts to rise above mere possibility to plausibility.

27 **2. Supervisory Liability**

28 While Plaintiff names Defendant Guzman as the only defendant in this action, she

1 mentions various supervisory correctional staff in her allegations. Thus, the below is applicable
2 as to any claims that Plaintiff intended to state against correctional staff merely because they
3 hold a supervisorial position.

4 Supervisory personnel are generally not liable under section 1983 for the actions of their
5 employees under a theory of respondeat superior and, therefore, when a named defendant holds
6 a supervisory position, the causal link between him and the claimed constitutional violation
7 must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v.
8 Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), *cert. denied*, 442 U.S. 941 (1979). To state a claim
9 for relief under section 1983 based on a theory of supervisory liability, Plaintiff must allege
10 some facts that would support a claim that a supervisory defendant either: personally
11 participated in the alleged deprivation of constitutional rights; knew of the violations and failed
12 to act to prevent them; or promulgated or “implemented a policy so deficient that the policy
13 ‘itself is a repudiation of constitutional rights’ and is ‘the moving force of the constitutional
14 violation.’” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted);
15 Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Under section 1983, liability may not be
16 imposed on supervisory personnel for the actions of their employees under a theory of
17 respondeat superior. Iqbal, 555 U.S. at 677. “In a §1983 suit or a Bivens action - where masters
18 do not answer for the torts of their servants - the term ‘supervisory liability’ is a misnomer.” Id.
19 Knowledge and acquiescence of a subordinate’s misconduct is insufficient to establish liability;
20 each government official is only liable for his or her own misconduct. Id.

21 “[B]are assertions . . . amount[ing] to nothing more than a “formulaic recitation of the
22 elements” of a constitutional discrimination claim,’ for the purposes of ruling on a motion to
23 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth.”
24 Moss, 572 F.3d at 969 (*quoting Iqbal*, 555 U.S. at 681 (*quoting Twombly*, 550 U.S. at 555)).
25 “Such allegations are not to be discounted because they are ‘unrealistic or nonsensical,’ but
26 rather because they do nothing more than state a legal conclusion -- even if that conclusion is
27 cast in the form of a factual allegation.” Id.

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3. Conspiracy

It appears that Plaintiff intends to allege that Defendant Guzman engaged in a conspiracy with other prison staff and inmates to torment her.

A claim brought for violation of section 1985(3) requires “four elements: (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of this conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States.” Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992) (*citation omitted*). A racial, or perhaps otherwise class-based, invidiously discriminatory animus is an indispensable element of a section 1985(3) claim. Spewell v. Golden State Warriors, 266 F.3d 979, 989 (9th Cir. 2001) (*quotations and citation omitted*). A claim for violation of section 1985(3) requires the existence of a conspiracy and an act in furtherance of the conspiracy. Holgate v. Baldwin, 425 F.3d 671, 676 (9th Cir. 2005) (*citation omitted*). A mere allegation of conspiracy is insufficient to state a claim. Id. at 676-77.

Any conspiracy claim that Plaintiff might have intended to allege is not cognizable as she does little other than state that Defendant Guzman “sent” others to harass her which is conclusory at best. *See Iqbal*, 555 U.S. at 678. Further, Plaintiff does not show any racial or class-based invidiously discriminatory animus on the part of any of the actors in her allegations.

II. CONCLUSION

For the reasons set forth above, Plaintiff’s Complaint is dismissed with leave to file a first amended complaint within thirty days. If Plaintiff needs an extension of time to comply with this order, Plaintiff must file a motion seeking an extension of time no later than thirty days from the date of service of this order.

Plaintiff must demonstrate in any first amended complaint how the conditions complained of have resulted in a deprivation of her constitutional rights. *See Ellis v. Cassidy*, 625 F.2d 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named defendant is involved and must give dates for each incident alleged. There can be

1 no liability under section 1983 unless there is some affirmative link or connection between a
2 defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.
3 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.
4 1978).

5 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short
6 and plain statement must "give the defendant fair notice of what the . . . claim is and the grounds
7 upon which it rests." Bell Atlantic Corp. v. Twombly 550 U.S. 544, 555 (2007) *quoting* Conley
8 v. Gibson, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
9 [sufficient] to raise a right to relief above the speculative level" Bell Atlantic Corp. v.
10 Twombly, 550 U.S. 127, 555 (2007) (citations omitted). Plaintiff is further advised that an
11 amended complaint supercedes the original, Lacey v. Maricopa County, 693 F.3d 896, 907 fn.1
12 (9th Cir. 2012) (en banc), and must be "complete in itself without reference to the prior or
13 superceded pleading," Local Rule 220.

14 The Court provides Plaintiff with opportunity to amend to cure the deficiencies
15 identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
16 Plaintiff may not change the nature of this suit by adding new, unrelated claims in her first
17 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"
18 complaints).

19 Based on the foregoing, it is HEREBY ORDERED that:

- 20 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 21 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 22 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must file
23 a first amended complaint curing the deficiencies identified by the Court in this
24 order; and

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1 4. If Plaintiff fails to comply with this order, this action will be dismissed for failure
2 to obey a court order and for failure to state a claim.

3 IT IS SO ORDERED.

4 **Dated: March 6, 2013**

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE