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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMISI J. CALLOWAY,

Plaintiff,

v.

DR. AKANNO, et al.,

Defendants.

Case No. 1:13-cv-00747-SAB-PC

ORDER DENYING PLAINTIFF’S MOTION
FOR LEAVE TO EXCEED 80 PAGES

(ECF NO. 25)

ORDER DISMISSING SECOND AMENDED
COMPLAINT AND GRANTING
PLAINTIFF LEAVE TO FILE A THIRD
AMENDED COMPLAINT

THIRTY DAY DEADLINE

Plaintiff Jamisi J. Calloway is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s motion for leave to file a second amended complaint that exceeds 80 pages in length, filed on April 8, 2016. (ECF No. 25.) On the same date, Plaintiff filed a 105 page second amended complaint. (ECF No. 26.)

I.

PROCEDURAL HISTORY

The complaint in this action was filed on May 20, 2013. (ECF No.1.) Plaintiff set forth claims of deliberate indifference to his serious medical needs and failure to protect in violation of the Eighth Amendment. On December 4, 2014, an order was entered, finding that the complaint stated a claim for relief against Dr. Akanno for his conduct on September 18, 2012. Plaintiff

1 failed to state a claim for relief against any of the remaining Defendants. Plaintiff was given an
2 opportunity to either file a first amended complaint or notify the Court of his willingness to
3 proceed against Dr. Akanno for his conduct on September 18, 2012. (ECF No. 16.) On
4 December 18, 2014, Plaintiff filed a first amended complaint. (ECF No. 17.) On February 4,
5 2016, an order was entered, finding that the first amended complaint stated a claim for relief
6 against Dr. Akanno for his conduct on September 18, 2012, but failed to state any other claims
7 for relief. (ECF No. 19.) Plaintiff was specifically advised that his deliberate indifference and
8 failure to protect claims as to the remaining Defendants were dismissed without leave to amend,
9 as Plaintiff had been advised of the deficiencies in the order dismissing the original complaint,
10 and Plaintiff failed to correct the deficiencies in the first amended complaint. Plaintiff's first
11 amended complaint failed to state a claim on his retaliation claim. Because Plaintiff raised his
12 retaliation claim for the first time in the first amended complaint, the Court granted Plaintiff
13 leave to file a second amended complaint that corrects the deficiencies identified by the Court
14 regarding his retaliation claim. On April 8, 2016, Plaintiff filed a motion for leave to file a
15 second amended complaint that exceeds 80 pages in length. Plaintiff also filed a second
16 amended complaint that is 105 pages in length.

17 **II.**

18 **SECOND AMENDED COMPLAINT**

19 Plaintiff's April 8, 2016, second amended complaint is 105 pages long, and includes
20 long, rambling allegations regarding the history of Plaintiff's health care. As noted above, the
21 first amended complaint stated a claim for relief against Dr. Akanno for deliberate indifference
22 to his serious medical needs on September 18, 2012. Plaintiff's remaining medical care and
23 failure to protect claims were dismissed. Plaintiff was granted leave to cure the defects identified
24 as to Plaintiff's retaliation claim only.

25 Plaintiff has twice been advised that a complaint must contain "a short and plain
26 statement of the claim showing that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2).
27 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause
28 of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.

1 662, 678 (2009)(citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover,
2 Plaintiff must demonstrate that each defendant personally participated in the deprivation of
3 Plaintiff's rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.2002). While "plaintiffs [now]
4 face a higher burden of pleading facts . . .," Al-Kidd v. Ashcroft, 580 F.3d 949, 977 (9th Cir.
5 2009), the pleadings of pro se prisoners are still construed liberally and are afforded the benefit
6 of any doubt. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).

7 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
8 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
9 that defendant is employed and in what capacity, and explain how that defendant acted under
10 color of state law. Plaintiff should state clearly, in his or her own words, what happened.
11 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described
12 by Plaintiff. Plaintiff does not need to prove his case at this stage of the litigation. The court is
13 only determining whether Plaintiff states a colorable claim. Legal argument and evidence are
14 not required at this stage of the litigation. Plaintiff is advised that a short and simple statement
15 of his claim will speed the screening of his case, and will help the litigation proceed in a more
16 efficient manner.

17 III.

18 CONCLUSION AND ORDER

19 Plaintiff has not made a showing as to why his second amended complaint should be 105
20 pages in length. In the order granting Plaintiff leave to file a second amended complaint, the
21 Court found Plaintiff's retaliation claim to be vague, and provided Plaintiff with specific
22 guidance in correcting this defect. (ECF No. 19 at 6:19.) An amended complaint need only re-
23 allege Dr. Akanno's conduct on September 18, 2012, and address the deficiency regarding
24 Plaintiff's retaliation claim. The April 8, 2016, second amended complaint is in violation of
25 Rule 8's requirement that Plaintiff set forth a short and plain statement of his claim.

26 Accordingly, IT IS HEREBY ORDERED that:

- 27 1. Plaintiff's April 8, 2016, motion for leave to file a second amended
28 complaint that exceeds 80 pages in length is DENIED;

