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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TONY PHELPS, Sr.)	Case No. 1:14-cv-251-AWI-BAM
)	
Plaintiffs,)	SCREENING ORDER DISMISSING FIRST
)	AMENDED COMPLAINT WITH LEAVE
v.)	TO AMEND
)	(Doc. 14)
MARGARET MIMMS, JERRY DYER,)	
)	
Defendant.)	THIRTY-DAY DEADLINE
)	
)	
)	

Plaintiff Tony Phelps, Sr. (“Plaintiff”) is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. After dismissal of his initial complaint alleging excessive force and deliberate indifference to medical needs pursuant to 28 U.S.C. § 1915(a), Plaintiff filed a First Amended Complaint (“FAC”) on June 6, 2014. (Doc. 14). Although unclear, Plaintiff’s one-paragraph FAC states facts possibly related to Plaintiff’s initial complaint. On its own, Plaintiff’s FAC is not complete without reference to another pleading and fails to include factual allegations supporting a cognizable claim for relief. Therefore, as discussed below, Plaintiff’s FAC is dismissed with leave to amend.

Screening Requirement

The Court is required to screen complaints brought by persons proceeding in pro per. 28 U.S.C. § 1915A(a). Plaintiff’s Complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2);
2 28 U.S.C. § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
7 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
8 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
9 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
10 (internal quotation marks and citation omitted).

11 While persons proceeding in pro se actions are still entitled to have their pleadings
12 liberally construed and to have any doubt resolved in their favor, the pleading standard is now
13 higher, *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), and to survive
14 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to
15 allow the Court to reasonably infer that each named defendant is liable for the misconduct
16 alleged, *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United*
17 *States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant
18 acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
19 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss*,
20 572 F.3d at 969.

21 **Plaintiff’s Allegations**

22 Plaintiff is currently incarcerated in the Fresno County Jail. In his first amended
23 complaint, Plaintiff alleges as follows:

24 Police officer got on the witness stand in my court hearing and stated that I had
25 died and they done an death test to confirm his statements.

26 Please read my court transcripts where police officer John Doe G-1 made the
27 above statements to the Judge and D.A. in courtroom #33 I had no thought nor
28 idea that I had died while I was in the care of said officer, until I went to court and
said officer stated on the witness stand that I had died when where and how I do
not know. [all sic].

1 Plaintiff seeks \$300,000.00 in damages.

2 **DISCUSSION**

3 Plaintiff's FAC complaint does not clearly identify a cause of action. However, based on
4 the allegations in Plaintiff's FAC, the Court speculates that he wishes to amend or add additional
5 factual allegations supporting his initial cause of action for deliberate indifference to serious
6 medical needs. (Doc. 13 at 5). Although the Court granted Plaintiff leave to amend in its initial
7 screening order, the Court informed plaintiff that any amended complaint must be complete in
8 itself without reference to any prior pleading. (Doc. 13 at 8). Despite this instruction, Plaintiff
9 failed to write or type an amended complaint that is complete in itself without reference to any
10 earlier filed complaint. See L.R. 220. Therefore, as discussed more fully below, Plaintiff's FAC
11 fails to comply with Federal Rule of Civil Procedure 8(a)(1) and his attempt to amend his
12 complaint has failed to comply with Local Rule 220. Fed. R. Civ. P. 8(a)(1); E.D. Cal., L.R.
13 220.

14 **A. Plaintiff Fails to Plead a Claim**

15 It is difficult to ascertain the nature of Plaintiff's claims, but it appears that in an effort to
16 allege the seriousness of an alleged injury, Plaintiff's first amended complaint states that officer
17 John Doe G-1 admitted that Plaintiff died while he was in the officer's care. No other facts are
18 pled.

19 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and
20 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).
21 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause
22 of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678
23 (citation omitted). Plaintiff must set forth "sufficient factual matter, accepted as true, to state a
24 claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at
25 555). While factual allegations are accepted as true, legal conclusions are not. *Id.*; see also
26 *Twombly*, 550 U.S. at 556–557; *Moss*, 572 F.3d at 969.

1 Plaintiff's brief, cursory FAC fails to identify any federal Constitutional right or federal
2 law under which Plaintiff is seeking relief. To the extent that Plaintiff is seeking to address
3 purported violations of his civil rights under 42 U.S.C. § 1983, such claims must be premised on
4 a violation of the Constitution or other federal rights. *Nurre v. Whitehead*, 580 F.3d 1087, 1092
5 (9th Cir. 2009). A properly pled complaint must provide, in part, a "short and plain statement" of
6 Plaintiff's claims showing entitlement to relief. Fed. R. Civ. P. 8(a)(2); *see also Paulsen v. CNF,*
7 *Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009).

8 Due to Plaintiff's sparse factual pleadings and failure to identify any specific federal right
9 or law that was violated, it is "very difficult to discern what precise claims plaintiff actually
10 wishes to raise, and which factual allegations support those claims." *Futrell v. Sacramento Cnty.*
11 *Dep't. of Health & Human Servs.*, No. 2:10-CV-2424 JAM KJN, 2011 U.S. Dist. LEXIS 19667,
12 2011 WL 666503, at *2 (E.D. Cal. Feb. 14, 2011). To remedy these problems, Plaintiff needs to
13 "clearly identify the claims that he wishes to pursue and provide succinct and coherent factual
14 allegations supporting each claim." *Futrell*, 2011 U.S. Dist. LEXIS 19739 at *5. Plaintiff should
15 also consider identifying each claim by an underlined "header," and conveying the factual
16 allegations supporting each claim under that specific header.

17 Further, plaintiff does not link any defendant to the alleged wrongful conduct. Plaintiff
18 must allege an actual connection or link between the actions of the defendants and the
19 deprivation alleged to have been suffered by Plaintiff. *See Monell v. Department of Social*
20 *Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Rizzo v. Goode*, 423 U.S. 362, 96
21 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth Circuit has held that "[a] person 'subjects' another
22 to the deprivation of a constitutional right, within the meaning of section 1983, if he does an
23 affirmative act, participates in another's affirmative acts or omits to perform an act which he is
24 legally required to do that causes the deprivation of which complaint is made." *Johnson v. Duffy*,
25 588 F.2d 740, 743 (9th Cir. 1978).

26 Plaintiff's allegations do not link any defendant to a specific violation. On amendment,
27 Plaintiff must specify what each defendant allegedly did to violate his federal rights.
28

1 Plaintiff's amended complaint fails to state a cognizable claim as required by Federal
2 Rule of Civil Procedure 8 and violates Local Rule 220. As noted above, the Court will provide
3 Plaintiff with a final opportunity to file a second amended complaint to cure the identified
4 deficiencies. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000). Plaintiff may not change the
5 nature of this suit by adding new, unrelated claims in his amended complaint. *George v. Smith*,
6 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

7 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
8 the named defendant did that led to the deprivation of Plaintiffs' constitutional rights, *Iqbal*, 556
9 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations must
10 be [sufficient] to raise a right to relief above the speculative level. . . ." *Twombly*, 550 U.S. at 555
11 (citations omitted).

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

- 13 1. Plaintiff's First Amended Complaint is dismissed for failure to state a cognizable
14 claim;
- 15 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file a
16 Second Amended Complaint;
- 17 3. If Plaintiff fails to file a Second Amended Complaint in compliance with this
18 order, this action will be dismissed for failure to obey a court order.

19
20 IT IS SO ORDERED.

21
22 Dated: August 5, 2014

/s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE