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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DURRELL A. PUCKETT,
Plaintiff,
v.
K. BRANDON,
Defendant.

Case No. 1:14-cv-00290-SAB PC
ORDER RE PLAINTIFF’S OBJECTION
(ECF No. 6)
THIRTY DAY DEADLINE

I.

BACKGROUND

Plaintiff Durrell A. Puckett, proceeding pro se and in forma pauperis, filed this action on March 3, 2014. On June 6, 2014, the Court screened Plaintiff’s complaint and issued an order finding Plaintiff had stated a claim against Defendant K. Brandon for retaliation in violation of the First Amendment. On June 20, 2014, Plaintiff file a documents entitled “Objections to the Judge Not Recognizing Emotional Injury as a Cognizable Claim.” (ECF No. 6.) Plaintiff’s objection was damaged in the mail and is to some extent unreadable. However, the Court is able to determine that Plaintiff is objecting that the order did not find a cognizable claim for infliction of emotional distress based upon Plaintiff stating he became suicidal and was placed in a state mental hospital.

1 **II.**

2 **DISCUSSION**

3 **A. CALIFORNIA TORT CLAIMS ACT**

4 The California Tort Claims Act¹ requires that a tort claim against a public entity or its
5 employees be presented to the California Victim Compensation and Government Claims Board,
6 formerly known as the State Board of Control, no more than six months after the cause of action
7 accrues. Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West 2010). Presentation of a
8 written claim, and action on or rejection of the claim are conditions precedent to suit. State v.
9 Superior Court of Kings County (Bodde), 90 P.3d 116, 119 (Cal. 2004); Shirk v. Vista Unified
10 School District, 42 Cal.4th 201, 209 (2007). To state a tort claim against a public employee, a
11 plaintiff must allege compliance with the California Tort Claims Act. Cal. Gov't Code § 950.6;
12 Bodde, 90 P.3d at 123. “[F]ailure to allege facts demonstrating or excusing compliance with the
13 requirement subjects a compliant to general demurrer for failure to state a cause of action.”
14 Bodde, 90 P.3d at 120.

15 Attached to Plaintiff’s complaint is a claim form he submitted to the Victim’s
16 Compensation Board and rejection letter.² In reviewing the claim form, it alleges that Defendant
17 Brandon retaliated against Plaintiff by pepper spraying him and throwing away legal paperwork,
18 pictures, obituaries, and books. (Government Claims Form, attached to complaint at 6-8, ECF
19 No. 1.) The question then is whether Plaintiff’s complaint of an unrelated retaliatory incident by
20 the same defendant is sufficient to comply with the requirement that his claim be presented and
21 acted on prior to commencing suit.

22 The purpose of the California Tort Claims Act is “to provide the public entity sufficient
23 information to enable it to adequately investigate claims and to settle them, if appropriate,

24 ¹ The Court recognizes that in City of Stockton v. Superior Court, 42 Cal.4th 730, 742 (Cal. 2007), California’s
25 Supreme Court adopted the practice of referring to California’s Tort Claims Act as the Government Claims Act.
26 However, given that the federal government has also enacted a Tort Claims Act, 28 U.S.C. § 2671, the Court here
refers to the Government Claims Act as the California Tort Claims Act in an effort to avoid confusion.

27 ² The incorporation by reference doctrine allows material attached to the complaint to be considered, as well as
28 “unattached evidence on which the complaint ‘necessarily relies’ if: (1) the complaint refers to the document; (2)
the document is central to plaintiff’s claim; and (3) no party questions the authenticity of the document.” Corinthian
Colleges, 655 F3d at 999.

1 without the expense of litigation.” Stockett v. Assoc. of California Water Agencies Joint Powers
2 Insurance Authority, 34 Cal.4th 441, 446 (2004) (quoting City of San Jose v. Superior Court, 12
3 Cal.3d 447, 455 (1974)). The claim does not need to contain the detail and specificity required
4 of a complaint filed in court, but it must fairly describe what the defendant is alleged to have
5 done so the entity can investigate and evaluate the claims. Stockett, 34 Cal.4th at 446.

6 Pursuant to California Government Code section 910(c), a claim must show “the date,
7 place and other circumstances of the occurrence or transaction which gave rise to the claim
8 asserted.” To comply with the California Torts Claim Act, the facts contained in the written
9 claim form must correspond with the facts alleged in the complaint to fairly reflect the written
10 claim. Blair v. Superior Court, 218 Cal.App.3d 221, 223-24 (1990). A claim is not sufficient
11 where it is entirely based upon a different set of facts from those stated in the complaint.
12 Stevenson v. San Francisco Housing Authority, 24 Cal.App.4th 269, 277 (1994). “Only where
13 there has been a ‘complete shift in allegations, usually involving an effort to premise civil
14 liability on acts or omissions committed at different times or by different persons than those
15 described in the claim,’ have courts generally found the complaint barred.” Stockett, 34 Cal.4th
16 at 447 (quoting Blair, 218 Cal.App.3d at 226)). “Where the complaint merely elaborates or adds
17 further detail to a claim, but is predicated on the same fundamental actions or failures to act by
18 the defendants, courts have generally found the claim fairly reflects the facts pled in the
19 complaint.” Stockett, 34 Cal.4th at 447.

20 In this instance, Plaintiff’s allegations in the complaint are based upon an entirely
21 different set of facts from those set forth in the claim form attached to the complaint. Plaintiff’s
22 claim form alleging that Defendant Brandon retaliated against him by destroying his property
23 and pepper spraying him on June 17, 2013, does not provide fair notice for the entity to
24 investigate the current allegations that she refused to feed him breakfast or lunch on 17 to 23
25 occasions and called him names. (ECF No. 1 at 4, 8.) Accordingly, Plaintiff’s claim form is
26 only sufficient to place the entity on notice of the allegations in the complaint that Defendant
27 Brandon threw away his property on June 17, 2013. The Court will next consider whether this
28 allegation is sufficient to state a claim for intentional infliction of emotional distress.

1 California law. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend ‘shall
2 be freely given when justice so requires,’ ” Fed. R. Civ. P. 15(a), and “[l]eave to amend should
3 be granted if it appears at all possible that the plaintiff can correct the defect,” Lopez v. Smith,
4 203 F.3d 1122, 1130 (9th Cir. 2000) (internal citations omitted). The Court will provide Plaintiff
5 with the opportunity to file an amended complaint curing the deficiencies identified by the Court
6 in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

7 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding
8 only against Defendant Brandon on the First Amendment claim, Plaintiff may so notify the Court
9 in writing. The state law claim will then be dismissed for failure to state a claim.

10 If Plaintiff elects to amend, his amended complaint should be brief, Fed. R. Civ. P. 8(a),
11 but must state what each named defendant did that led to the deprivation of Plaintiff’s
12 constitutional or other federal rights. Iqbal, 129 S. Ct. at 1948-49; Jones, 297 F.3d at 934.
13 Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief
14 above the speculative level” Twombly, 550 U.S. at 555 (citations omitted). The mere
15 possibility of misconduct is insufficient to state a claim. Iqbal, 129 S. Ct. at 1950. Further,
16 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended
17 complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

18 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana,
19 Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987),
20 and must be “complete in itself without reference to the prior or superseded pleading,” Local
21 Rule 220.

22 Based on the foregoing, IT IS HEREBY ORDERED that:

- 23 1. Plaintiff’s objections to the Court not finding a claim for infliction of emotional
24 distress are overruled;
- 25 2. Plaintiff shall be granted thirty days from the date of service of this order to notify
26 the Court that he wishes to proceed only on the claim found to be cognizable in
27 the complaint or file an amended complaint to cure the deficiencies in this order;
28 and

1 3. If Plaintiff does not file an amended complaint as directed in this order, this action
2 shall proceed against Defendant Brandon on the claims found cognizable in the
3 June 6, 2014 order.

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5 IT IS SO ORDERED.

6 Dated: June 24, 2014



UNITED STATES MAGISTRATE JUDGE

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