

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DALE OWEN DUSTIN,
Plaintiff,
vs.
C. GIPSON, et al.,
Defendants

1:14-cv-01405 LJO GSA PC

**ORDER DIRECTING PLAINTIFF TO FILE
AN AN AMENDED COMPLAINT**

**AMENDED COMPLAINT DUE
IN THIRTY DAYS**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

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

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
2 1915(e)(2)(B)(ii).

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N.A., 534
5 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
6 short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed.
7 R.Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the
8 plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512.
9 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”
10 Nietze v. Williams, 490 U.S. 319, 330 n. 9 (1989). “[A] liberal interpretation of a civil rights
11 complaint may not supply essential elements of the claim that were not initially pled.” Bruns v.
12 Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)(quoting Ivey v. Bd. of Regents,
13 673 F.2d 266, 268 (9th Cir. 1982)).

14 Plaintiff, an inmate in the custody of the California Department of Corrections and
15 Rehabilitation (CDCR) at Corcoran State Prison, brings this action against defendant
16 correctional officials employed by the CDCR at Corcoran. Plaintiff names several individual
17 defendants.

18 Plaintiff’s statement of claim consists of 43 pages of rambling narrative, and is written
19 in a small script which is difficult to read. Plaintiff refers to various conditions of his
20 confinement, and sets forth conclusory allegations. In order to state a claim, Plaintiff must
21 simply set forth his legal claim and factual allegations in support of his claim. Plaintiff must
22 allege conduct as to each defendant that deprived Plaintiff of a constitutional right.

23 Although accepted as true, “factual allegations must be sufficient to raise a right to
24 relief above the speculative level.” Twombly, 550 U.S. at 555 (citations omitted). A plaintiff
25 must set forth “the grounds of his entitlement to relief.” Which “requires more than labels and
26 conclusions, and a formulaic recitation of the elements of a cause of action.” Id. at 555-56
27 (internal quotation marks and citations omitted). To adequately state a claim against a
28 defendant, a plaintiff must set forth the legal and factual basis for his claim.

1 Plaintiff need not, however, set forth legal arguments in support of his claims. In order
2 to hold an individual defendant liable, Plaintiff must name the individual defendant, describe
3 where that defendant is employed and in what capacity, and explain how that defendant acted
4 under color of state law. Plaintiff should state clearly, in his or her own words, what happened.
5 Plaintiff must describe what each defendant, *by name*, did to violate the particular right
6 described by Plaintiff.

7 As noted, the court must screen the complaint prior to service upon defendants. 28
8 U.S.C. § 1915A(b),(1), (2). At the screening stage, the court is only determining whether
9 Plaintiff states a colorable claim for relief. Should Plaintiff state a claim for relief, the court
10 will direct service of process. A schedule for litigation will be set, including the opportunity to
11 engage in discovery. Plaintiff does not need to prove his case at this stage of the litigation.
12 The court is only determining whether Plaintiff states a colorable claim. Legal argument and
13 evidence are not required at this stage of the litigation.¹

14 Plaintiff is advised that a short and simple statement of his claim will speed the
15 screening of his case, and will help the litigation proceed in a more efficient manner. Plaintiff
16 is advised that this court has pending before it many prisoner civil rights cases. In the interest
17 of judicial efficiency and in the interest of timely addressing the many constitutional claims
18 before it, the court therefore directs Plaintiff to file an amended complaint that complies with
19 the following conditions:

20 1. The amended complaint must be legibly written or typewritten on forms
21 supplied by the court and signed by Plaintiff.

22 2. The form must be completed in accordance with the instructions provided
23 with the forms.

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25
26 ¹ While exhibits are permissible if incorporated by reference, Fed. R. Civ. P. 10(c), they are not
27 necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). Plaintiff is advised that under Rule 8 of
28 the Federal Rules of Civil Procedure, he is only obligated to provide “a short and plain statement of [his] claim.”
Plaintiff is not obligated to prove the allegations in the complaint at this stage. Attaching a large number of
exhibits to a complaint will result in the complaint being dismissed for failure to comply with Federal Rule of
Civil Procedure 8, as it will render the complaint to be neither a “short” nor “plain” statement of Plaintiff’s claims.

1 3. The amended complaint must be a short, simple and concise statement of
2 Plaintiff's claim.

3 4. Additional pages beyond those allowed in the court's form may not exceed
4 25 pages without leave of court.

5 5. The court approved form and any additional pages submitted must be written
6 or typed on only one side of a page and the writing or typewriting must be no smaller in size
7 than standard elite type.

8 6. Plaintiff's failure to file an amended complaint in compliance with this order
9 will result in a recommendation that this action be dismissed for Plaintiff's failure to prosecute.

10 IT IS SO ORDERED.

12 Dated: May 16, 2015

13 _____
14 /s/ **Gary S. Austin**

15 UNITED STATES MAGISTRATE JUDGE