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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

| | | |
|------------------------------|---|----------------------------------|
| EDWARD PRICE, |) | 1:16-cv-00702-LJO-BAM |
| |) | |
| Plaintiff, |) | |
| |) | SCREENING ORDER DISMISSING THIRD |
| v. |) | AMENDED COMPLAINT WITH LEAVE |
| |) | TO AMEND |
| RAYMOND E. MABUS, Secretary, |) | (Doc. 9) |
| Department of the Navy, |) | |
| |) | |
| Defendant. |) | THIRTY-DAY DEADLINE |
| |) | |
| |) | |
| |) | |

SCREENING ORDER

Plaintiff Edward Price (“Plaintiff”) proceeds pro se and in forma pauperis in this civil action. On September 2, 2016, the Court dismissed Plaintiff’s first amended complaint with leave to amend within thirty (30) days. On September 16, 2016, Plaintiff filed a letter with the Court, which included a decision issued by the U.S. Equal Employment Opportunity Commission on September 1, 2016. (Doc. 6). On September 7, 2016, Plaintiff filed a right to sue letter issued by the California Department of Fair Employment & Housing on September 20, 2016. (Doc. 7). The Court construed these documents as Plaintiff’s second amended complaint. On October 18, 2016, the Court dismissed Plaintiff’s second amended complaint with leave to amend because the letters filed with the Court failed to comply with Federal Rules of Civil Procedure 8 and 10. (Doc. 8). Plaintiff’s third amended complaint, filed on November 10, 2016, is currently before the Court for screening. (Doc. 9).

1 **Screening Requirement**

2 The Court is required to screen complaints brought by persons proceeding in pro per. 28
3 U.S.C. § 1915(e)(2). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is
4 frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
6 1915(e)(2)(B)(ii).

7 A complaint must contain “a short and plain statement of the claim showing that the
8 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
9 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
10 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
11 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
12 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
13 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
14 (internal quotation marks and citation omitted).

15 Pro se litigants are entitled to have their pleadings liberally construed and to have any
16 doubt resolved in their favor, *Wilhelm v. Rotman*, 680 F.3d 1113, 1121-1123 (9th Cir. 2012),
17 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010), but to survive screening, Plaintiff’s claims
18 must be facially plausible, which requires sufficient factual detail to allow the Court to
19 reasonably infer that each named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S.
20 at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United States Secret Service*, 572
21 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not
22 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.
23 *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949; *Moss*, 572 F.3d at 969.

24 **Plaintiff’s Allegations**

25 Plaintiff, an African-American male civil service employee, worked as a transportation
26 assistant in the Fleet Logistics Center in Lemoore, California. He alleges that in October 2009,
27 Grace Sotelo was appointed as his supervisor in the Fleet Logistics Center. Plaintiff repeatedly
28 reported problems in the shipping department to Ms. Sotelo. Plaintiff claims that he was

1 responsible for keeping the shipping department running from September 2009 through March
2 2014, including paying shipping bills and booking trucks. Plaintiff alleges that every time he
3 applied for a different job, Human Resources said that he was not qualified. Plaintiff also alleges
4 that Ms. Sotelo and Mr. Getty had him investigated by N.C.I.S. for fraud, bribery, wire fraud and
5 other unethical behavior. Plaintiff was cleared of all charges, but Ms. Sotelo and Mr. Getty
6 continued to harass him and make false accusations until he was terminated. Plaintiff complains
7 of racial discrimination and wrongful termination.

8 DISCUSSION

9 Plaintiff's third amended complaint is comprised of (1) a letter to Robert J. Barnhart in
10 support of Plaintiff's Equal Employment Opportunity Commission Appeal; and (2) a letter to the
11 Office of Federal Operations dated 9/23/2016. (Doc. 9). As with his second amended
12 complaint, Plaintiff's third amended complaint fails to comply with Federal Rules of Civil
13 Procedure 8 and 10. Plaintiff may not simply file letters to other persons or government agencies
14 in lieu of a complaint containing factual allegations and causes of action. Further, the letter
15 addressed to Robert J. Barnhart is identical to the one filed as part of Plaintiff's first amended
16 complaint (Doc. 4, pp. 3-5), which was dismissed, in part, for failure to comply with Federal
17 Rules of Civil Procedure 8 and 10 (Doc. 5).

18 The Court previously advised Plaintiff that he would be permitted one final opportunity
19 to amend his complaint. However, in an abundance of caution, Plaintiff will be given **one final**
20 **opportunity** to amend his complaint. To assist Plaintiff, the Court provides the following the
21 pleading and legal standards that appear applicable:

22 **1. Federal Rule of Civil Procedure 8**

23 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain "a short and
24 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).
25 As noted above, detailed factual allegations are not required, but "[t]hreadbare recitals of the
26 elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*,
27 556 U.S. at 678 (citation omitted). Plaintiff must set forth "sufficient factual matter, accepted as
28 true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting

1 *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are
2 not. *Id.*; *see also Twombly*, 550 U.S. at 556–557; *Moss*, 572 F.3d at 969.

3 As stated, Plaintiff’s filing of letters addressed to other persons or government agencies is
4 not sufficient to satisfy the pleading requirements of Federal Rule of Civil Procedure 8. If
5 Plaintiff elects to amend his complaint, Plaintiff must prepare a separate complaint that includes
6 the relevant factual allegations, including what happened, when it happened and who was
7 involved. Plaintiff also should include his asserted causes of action and requested relief.

8 **2. Federal Rule of Civil Procedure 10**

9 Federal Rule of Civil Procedure 10 outlines the form of pleadings required in federal
10 court. In particular, Rule 10 requires a party to “state its claims or defenses in numbered
11 paragraphs, each limited as far as practicable to single set of circumstances.” Fed. R. Civ. P.
12 10(b). Additionally, if doing so would promote clarity, “each claim founded on a separate
13 transaction or occurrence . . . must be stated in a separate count or defense.” *Id.*

14 Here, Plaintiff’s letters are not sufficient to satisfy the pleading requirements of Federal
15 Rule of Civil Procedure 10. Plaintiff’s letters do not contain numbered paragraphs or separate
16 claims based on separate transactions or occurrences. If Plaintiff elects to amend his complaint,
17 he must prepare a stand-alone complaint, which is not comprised of letters to other persons or
18 government agencies, that includes separate numbered paragraphs limited to a single set of
19 circumstances and he must state separate claims founded on separate transactions or occurrences.

20 **3. Plaintiff’s Claims**

21 Plaintiff appears to be pursuing a discrimination claim pursuant to Title VII of the Civil
22 Rights Act. The protection against employment discrimination provided by Title VII applies to
23 civilian employees of the military through 42 U.S.C. § 2000e–16(a). *Gonzalez v. Dep’t. of Army*,
24 718 F.2d 926, 928 (9th Cir. 1983). However, it is not clear what precise employment actions he
25 believes were discriminatory beyond the failure to receive positions for which he reportedly was
26 not qualified. In his complaint, Plaintiff has detailed various issues with billing, computer
27 systems and the availability of trucks, but he does not adequately explain how these issues
28 involved discrimination. Instead, they appear to be Plaintiff’s complaints about inadequacies in

1 management of the Fleet Logistics Center. Plaintiff also has not explained the circumstances
2 surrounding his termination from employment by Human Resources. Conclusory statements that
3 he was discriminated against are not sufficient to state a cognizable claim. *Iqbal*, 556 U.S. at
4 678. Plaintiff will be given leave to amend to cure these deficiencies.

5 However, to the extent Plaintiff's termination claims are not premised upon
6 discrimination, they are preempted by the Civil Service Reform Act ("CSRA"), 5 U.S.C. § 1101
7 *et seq.*, which is the exclusive administrative remedy for a federal civil service employee alleging
8 wrongful termination. *See Elgin v. Dep't of Treasury*, 132 S.Ct. 2126 (2012); *Saul v. United*
9 *States*, 928 F.2d 829, 842 (9th Cir. 1991).

10 CONCLUSION AND ORDER

11 Plaintiff's third amended complaint fails to comply with Federal Rule of Civil Procedure
12 8 and 10, and fails to state a cognizable claim. As Plaintiff is proceeding pro se, the Court will
13 provide him with **one final opportunity** to amend his complaint. *Lopez v. Smith*, 203 F.3d
14 1122, 1130 (9th Cir. 2000). Plaintiff may not change the nature of this suit by adding new,
15 unrelated claims in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)
16 (no "buckshot" complaints).

17 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
18 the named defendant did that led to the deprivation of Plaintiff's rights, *Iqbal*, 556 U.S. at 678-
19 79, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations must be
20 [sufficient] to raise a right to relief above the speculative level. . . ." *Twombly*, 550 U.S. at 555
21 (citations omitted).

22 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
23 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 927 (9th Cir. 2012) (en banc). Therefore, Plaintiff's
24 amended complaint must be "complete in itself without reference to the prior or superseded
25 pleading." Local Rule 220.

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

- 27 1. Plaintiff's third amended complaint is dismissed for failure to comply with
28 Federal Rules of Civil Procedure 8 and 10 and failure to state a cognizable claim;

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- 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file a fourth amended complaint; and
- 3. **If Plaintiff fails to file a fourth amended complaint in compliance with this order, this action will be dismissed for failure to obey a court order and failure to state a cognizable claim.**

IT IS SO ORDERED.

Dated: November 28, 2016

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE