

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

EDWARD PRICE,)	1:16-cv-00702-LJO-BAM
)	
Plaintiff,)	
)	SCREENING ORDER RE SECOND
v.)	AMENDED COMPLAINT
)	
RAYMOND E. MABUS, Secretary,)	
Department of the Navy,)	
)	THIRTY-DAY DEADLINE
Defendant.)	
)	
)	
)	

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 construes these documents as Plaintiff’s second amended complaint.

Screening Requirement

The Court is required to screen complaints brought by persons proceeding in pro per. 28 U.S.C. § 1915(e)(2). 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. §
2 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 Pro se litigants are entitled to have their pleadings liberally construed and to have any
12 doubt resolved in their favor, *Wilhelm v. Rotman*, 680 F.3d 1113, 1121-1123 (9th Cir. 2012),
13 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010), but to survive screening, Plaintiff’s claims
14 must be facially plausible, which requires sufficient factual detail to allow the Court to
15 reasonably infer that each named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S.
16 at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United States Secret Service*, 572
17 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not
18 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.
19 *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949; *Moss*, 572 F.3d at 969.

20 DISCUSSION

21 Plaintiff’s second amended complaint, which is comprised of a letter, a decision by the
22 U.S. Equal Employment Opportunity Commission (“EEOC”) and a right to sue letter from the
23 California Department of Fair Employment & Housing (“DFEH”) fails to comply with Federal
24 Rules of Civil Procedure 8 and 10. As Plaintiff is proceeding pro se, he will be given **one final**
25 **opportunity** to amend his complaint. To assist Plaintiff, the Court provides the following the
26 standards:

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

28 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and

1 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).
2 As noted above, detailed factual allegations are not required, but “[t]hreadbare recitals of the
3 elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*,
4 556 U.S. at 678 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as
5 true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting
6 *Twombly*, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are
7 not. *Id.*; *see also Twombly*, 550 U.S. at 556–557; *Moss*, 572 F.3d at 969.

8 Plaintiff’s filing of EEOC and DFEH documents is not sufficient to satisfy the pleading
9 requirements of Federal Rule of Civil Procedure 8. The Court will not scour the EEOC decision
10 to determine Plaintiff’s claims and allegations in this action. If Plaintiff elects to amend his
11 complaint, Plaintiff must prepare a separate complaint that includes the relevant factual
12 allegations and asserted causes of action.

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

14 Federal Rule of Civil Procedure 10 outlines the form of pleadings required in federal
15 court. In particular, Rule 10 requires a party to “state its claims or defenses in numbered
16 paragraphs, each limited as far as practicable to single set of circumstances.” Fed. R. Civ. P.
17 10(b). Additionally, if doing so would promote clarity, “each claim founded on a separate
18 transaction or occurrence . . . must be stated in a separate count or defense.” *Id.*

19 Here, Plaintiff’s letter and documents from the EEOC and DFEH are not sufficient to
20 satisfy the pleading requirements of Federal Rule of Civil Procedure 10. If Plaintiff elects to
21 amend his complaint, he must prepare a complaint that includes separate numbered paragraphs
22 limited to a single set of circumstances and he must separate claims founded on separate
23 transactions or occurrences.

24 **CONCLUSION AND ORDER**

25 Plaintiff’s second amended complaint fails to comply with Federal Rule of Civil
26 Procedure 8 and 10. As Plaintiff is proceeding pro se, the Court will provide him with **one final**
27 **opportunity** to amend his complaint. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).
28

1 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his amended
2 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

3 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
4 the named defendant did that led to the deprivation of Plaintiff’s rights, *Iqbal*, 556 U.S. at 678-
5 79, 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must be
6 [sufficient] to raise a right to relief above the speculative level. . . .” *Twombly*, 550 U.S. at 555
7 (citations omitted).

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

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

- 13 1. Plaintiff’s second amended complaint is dismissed for failure to comply with
14 Federal Rules of Civil Procedure 8 and 10;
- 15 2. Within thirty (30) days from the date of service of this order, Plaintiff shall file a
16 third amended complaint; and
- 17 3. **If Plaintiff fails to file an amended complaint in compliance with this order,**
18 **the Court will dismiss this action, with prejudice, for failure to state a claim**
19 **and to obey a court order.**

20
21 IT IS SO ORDERED.

22 Dated: October 17, 2016

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