

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

FREDDIE MONTOYA,
Plaintiff,
v.
MURPHY, et al.,
Defendants.

Case No. 1:18-cv-00060-BAM (PC)
**ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION**
**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION,
WITH PREJUDICE, FOR FAILURE TO
STATE A CLAIM, FAILURE TO OBEY A
COURT ORDER, AND FAILURE TO
PROSECUTE**
(ECF No. 16)
FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Freddie Montoya (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action in the United States District Court for the Southern District of California on January 5, 2018. (ECF No. 1.) This action was transferred to the Eastern District on January 12, 2018. (ECF No. 4.) On July 10, 2018, the Court dismissed Plaintiff’s complaint with leave to amend within thirty days after service. (ECF No. 16.) Plaintiff was expressly warned that if he failed to file a first amended complaint in compliance with the Court’s order, this action would be dismissed for failure to state a claim and failure to obey a court order. (Id. at 6.) The deadline for Plaintiff to

1 file a first amended complaint expired on August 13, 2018, and he has not complied with the
2 Court’s order or otherwise communicated with the Court.

3 **II. Failure to State a Claim**

4 **A. Screening Requirement**

5 The Court is required to screen complaints brought by prisoners seeking relief against a
6 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
7 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or
8 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
9 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
10 § 1915(e)(2)(B)(ii).

11 A complaint must contain “a short and plain statement of the claim showing that the
12 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
13 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
14 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937,
15 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65
16 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
17 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
18 (internal quotation marks and citation omitted).

19 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
20 liberally construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338,
21 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially
22 plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each
23 named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949
24 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
25 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere
26 consistency with liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678,
27 129 S. Ct. at 1949 (quotation marks omitted); Moss, 572 F.3d at 969.

28 ///

1 **B. Plaintiff's Allegations**

2 Plaintiff is currently housed at the California Health Care Facility in Stockton, California.
3 The events in the complaint are alleged to have occurred in Los Angeles, Stockton and
4 Tehachapi. Plaintiff names the following defendants: (1) Lorrain Murphy, Parole Agent in Los
5 Angeles, California; (2) Correctional Officer Scott, California Health Care Facility, Stockton,
6 California; (3) Correctional Officer Decord, California Health Care Facility, Stockton, California;
7 and (3) Warden, Tehachapi Prison.

8 In Claim 1, Plaintiff alleges that Parole Agent Murphy failed to proofread the information
9 she entered into her state-owned computer. She reportedly entered a penal code section that did
10 not apply to Plaintiff and which caused him to be stabbed multiple times, leaving him
11 permanently handicapped. According to exhibits attached to the complaint, Plaintiff was stabbed
12 while at California Correctional Institution at Tehachapi.

13 In Claim 2, Plaintiff alleges that Correctional Officer Decord placed bleach in Plaintiff's
14 prescription eye drop bottle, which could have blinded him.

15 In Claim 3, Plaintiff alleges that Correctional Officer Scott placed bleach in Plaintiff's
16 prescription eye drop medication bottle.

17 **C. Discussion**

18 **1. Venue for Claims Arising at the California Health Care Facility**

19 Plaintiff brings suit against Defendants Scott and Decord for alleged conduct at the
20 California Health Care Facility. This facility is located in Stockton, California, which is in San
21 Joaquin County. Therefore, proper venue for any claims against Defendants Scott or Decord
22 should have been filed in the Sacramento Division of the Eastern District of California. 28
23 U.S.C. § 1391(b); Local Rule 120. Accordingly, the Court will not screen the claims asserted
24 against Defendants Scott and Decord.

25 Further, to the extent Plaintiff is attempting to assert unrelated claims against unrelated
26 parties in a single action, he may not do so. Fed. R. Civ. P. 18(a), 20(a)(2); Owens v. Hinsley,
27 635 F.3d 950, 952 (7th Cir. 2011); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff
28 may bring a claim against multiple defendants so long as (1) the claim arises out of the same

1 transaction or occurrence, or series of transactions and occurrences, and (2) there are common
2 questions of law or fact. Fed. R. Civ. P. 20(a)(2); Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th
3 Cir. 1997). The “same transaction” requirement refers to similarity in the factual background of a
4 claim. Id. at 1349. Only if the defendants are properly joined under Rule 20(a) will the Court
5 review the other claims to determine if they may be joined under Rule 18(a), which permits the
6 joinder of multiple claims against the same party. Thus, Plaintiff may not bring in one case all
7 claims he has arising from different incidents arising on different dates, involving different
8 defendants at different institutions. Unrelated claims involving multiple defendants belong in
9 different suits. See George, 507 F.3d at 607.

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

11 As to Plaintiff’s claims against Defendant Murphy and Defendant Warden, those claims
12 fails to comply with Federal Rule of Civil Procedure 8. Pursuant to Rule 8, a complaint must
13 contain “a short and plain statement of the claim showing that the pleader is entitled to relief.”
14 Fed. R. Civ. P. 8(a). Detailed factual allegations are not required, but “[t]hreadbare recitals of the
15 elements of a cause of action, supported by mere conclusory statements, do not suffice.” Iqbal,
16 556 U.S. at 678 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as
17 true, to ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting
18 Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are
19 not. Id.; see also Twombly, 550 U.S. at 556–557; Moss, 572 F.3d at 969.

20 Here, Plaintiff’s complaint does not include sufficient factual allegations to state a claim
21 that is plausible on its face as to either Defendant Murphy or Defendant Warden. With respect to
22 Defendant Murphy, the complaint contains no allegations regarding what happened, when it
23 happened, the penal code at issue or any other assertion as to how Defendant Murphy’s actions
24 resulted in any harm. With respect to Defendant Warden, Plaintiff’s complaint does not include
25 any allegations against him/her to state a claim. Plaintiff must allege what happened, when it
26 happened and who was involved.

27 ///

28 ///

1 **III. Failure to Prosecute and Failure to Obey a Court Order**

2 **A. Legal Standard**

3 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
4 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
5 within the inherent power of the Court.” District courts have the inherent power to control their
6 dockets and “[i]n the exercise of that power they may impose sanctions including, where
7 appropriate, . . . dismissal.” Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A
8 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
9 failure to obey a court order, or failure to comply with local rules. See, e.g., Ghazali v. Moran, 46
10 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet,
11 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
12 amendment of complaint); Malone v. U.S. Postal Serv., 833 F.2d 128, 130–33 (9th Cir. 1987)
13 (dismissal for failure to comply with court order).

14 In determining whether to dismiss an action, the Court must consider several factors:
15 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
16 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
17 cases on their merits; and (5) the availability of less drastic sanctions. Henderson v. Duncan, 779
18 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988).

19 **B. Discussion**

20 Here, the action has been pending since January 2018, and Plaintiff’s first amended
21 complaint is overdue. The Court cannot hold this case in abeyance awaiting compliance by
22 Plaintiff. Thus, the Court finds that both the first and second factors weigh in favor of dismissal.

23 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
24 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
25 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs
26 against dismissal because public policy favors disposition on the merits. Pagtalunan v. Galaza,
27 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
28 responsibility it is to move a case toward disposition on the merits but whose conduct impedes

1 progress in that direction,” which is the case here. In re Phenylpropanolamine (PPA) Prods. Liab.
2 Litig., 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

3 Finally, the court’s warning to a party that failure to obey the court’s order will result in
4 dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262;
5 Malone, 833 at 132–33; Henderson, 779 F.2d at 1424. The Court’s July 10, 2018 order expressly
6 warned Plaintiff that his failure to comply with that order would result in a dismissal of this
7 action, with prejudice, for failure to obey a court order and failure to state a claim. (ECF No. 16,
8 p. 6.) Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance.

9 Additionally, at this stage in the proceedings there is little available to the Court which
10 would constitute a satisfactory lesser sanction while protecting the Court from further
11 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this
12 action, making monetary sanctions of little use, and the preclusion of evidence or witnesses is
13 likely to have no effect given that Plaintiff has ceased litigating his case.

14 **IV. Conclusion and Recommendations**

15 Accordingly, the Clerk of the Court is HEREBY DIRECTED to randomly assign a
16 District Judge to this action.

17 Furthermore, for the reasons stated above, it is HEREBY RECOMMENDED that this
18 action be dismissed, with prejudice, for Plaintiff’s failure to state a claim pursuant to 28 U.S.C.
19 § 1915A, failure to obey the Court’s July 10, 2018 order (ECF No. 16), and failure to prosecute
20 this action.

21
22
23
24 These Findings and Recommendations will be submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
26 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
27 file written objections with the Court. The document should be captioned “Objections to
28 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file

1 objections within the specified time may result in the waiver of the “right to challenge the
2 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
3 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: August 27, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE