

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH W. JONES-BEY,

Plaintiff, No. CIV S-08-0148 WBS EFB P
vs.

JAMES E. TILTON,

Defendant. ORDER

15 Joseph W. Jones-Bey, an inmate confined at California State Prison, Sacramento, filed
16 this pro se civil rights action under 42 U.S.C. § 1983. In addition to filing a complaint and an
17 amended complaint, plaintiff has filed an application to proceed in forma pauperis. This
18 proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

I. Request to Proceed In Forma Pauperis

20 Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.
21 Dckt. No. 2. Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and
22 (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to
23 collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.
24 § 1915(b)(1) and (2).

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1 **II. Screening Order**

2 Pursuant to 28 U.S.C. § 1915A, the court shall review “a complaint in a civil action in
3 which a prisoner seeks redress from a governmental entity or officer or employee of a
4 governmental entity.” 28 U.S.C. § 1915A(a). “On review, the court shall identify cognizable
5 claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous,
6 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
7 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:
9 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that
10 the alleged violation was committed by a person acting under the color of state law. *West v.*
11 *Atkins*, 487 U.S. 42, 48 (1988).

12 A district court must construe a pro se pleading “liberally” to determine if it states a
13 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an
14 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While
15 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of
16 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.
17 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
18 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
19 plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

20 A claim has facial plausibility when the plaintiff pleads factual content that allows
21 the court to draw the reasonable inference that the defendant is liable for the
22 misconduct alleged. The plausibility standard is not akin to a “probability
23 requirement,” but it asks for more than a sheer possibility that a defendant has
acted unlawfully. Where a complaint pleads facts that are merely consistent with a
defendant’s liability, it stops short of the line between possibility and plausibility
of entitlement to relief.

24 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the
25 framework of a complaint, they must be supported by factual allegations, and are not entitled to
26 the assumption of truth. *Id.* at 1950.

1 Plaintiff's complaint fails to meet that standard. Indeed, it violates Rule 8(a) of the
2 Federal Rules of Civil Procedure. The complaint is so prolix and obscure that the court cannot
3 reasonably discharge its responsibility under § 1915A until plaintiff complies with the pleading
4 requirements set forth in Rule 8. This rule requires the pleader to set forth his averments in a
5 simple, concise, and direct manner. The degree of simplicity and conciseness required depends
6 on the subject matter of the litigation, the nature of the claims or defenses presented and the
7 number of parties involved. Wright & Miller, *Federal Practice & Procedure*, vol. 5 § 1281 & n.
8 12 (1990) (explaining that an antitrust or copyright pleading due to its complexity, must be
9 pleaded with more detail than a simple negligence complaint). Before undertaking to determine
10 whether the complaint may have merit, the court may insist upon compliance with its rules. *See*
11 *McNeil v. United States*, 508 U.S. 106, 113 (1993) (federal rules apply to all litigants, including
12 prisoners lacking access to counsel); *see also Crawford-El v. Britton*, 523 U.S. 574, 598 (1998)
13 (encouraging “firm application” of federal rules in prisoner cases).

14 In reviewing plaintiff's complaint, the court is required to guess who is being sued for
15 what. If the pleading were served in its present form it would not give defendants fair notice of
16 the claims against them and their best guess about the nature of plaintiff's complaint may be
17 quite different than the court's. *See, McHenry v. Renne*, 84 F.3d 1172, 1170-78 (9th Cir. 1996)
18 (court should be able to read the complaint in minutes, not hours, and may consider the rights of
19 defendants to be free from costly and harassing litigation and other litigants waiting their turns to
20 have other matters resolved); *see also, Nevijel v. North Coast Life Insurance Co.*, 651 F.2d 671,
21 674-75 (9th Cir. 1971); *Von Poppenheim v. Portland Boxing & Wrestling Commission*, 442 F.2d
22 1047, 1049-50 (9th Cir. 1971).

23 Plaintiff need not identify the law that makes the alleged conduct wrong. He may use
24 his own language to state, simply and directly, the wrong that has been committed and clearly
25 explain how each state actor identified as a defendant was involved and what relief plaintiff
26 requests of each defendant. *Jones v. Community Redevelopment Agency of the City of Los*

1 *Angeles*, 733 F.2d 646 (9th Cir. 1984); *Johnson v. Duffy*, 588 F.2d 740 (9th Cir. 1978).

2 Accordingly, if plaintiff wishes to continue this litigation he must file an amended
3 complaint. A prisoner pursuing civil rights claims without counsel, like all other litigants, is
4 required to obey the court's orders, including an order to amend his pleading. *Ferdik v.*
5 *Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992); *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th
6 Cir. 2002). His failure to obey the court's orders and the local and federal rules and meet his
7 responsibilities in prosecuting this action may justify dismissal, including dismissal with
8 prejudice. *Ferdik*, 963 F.2d at 1262-63 (affirming dismissal with prejudice for pro se prisoner's
9 failure to comply with order requiring filing of amended civil rights complaint); *Pagtalunan*, 291
10 F.3d at 642 (affirming dismissal with prejudice for pro se prisoner's failure to comply with order
11 requiring filing of amended habeas petition); *Moore v. United States*, 193 F.R.D. 647, 653 (N.D.
12 Cal. 2000) (denying motion for leave to file third amended complaint and dismissing action with
13 prejudice for pro se plaintiff's failure to comply with Rule 8); *Franklin v. Murphy*, 745 F.2d
14 1221, 1232-33 (9th Cir. 1984) (affirming dismissal with prejudice for pro se prisoner's failure to
15 prosecute); *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1988) (affirming dismissal without
16 prejudice for pro se prisoner's failure to comply with local rule requiring he notify the court of
17 any change of address).

18 Plaintiff's amended complaint must adhere to the following requirements:

19 It must be complete in itself without reference to any prior pleading. E.D. Cal. Local
20 Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
21 complaint, the original pleading is superseded.

22 It must show that the federal court has jurisdiction and that plaintiff's action is brought in
23 the right place, that plaintiff is entitled to relief if plaintiff's allegations are true, and must
24 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
25 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
26 *Johnson*, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if

1 he does an act, participates in another's act or omits to perform an act he is legally required to do
2 that causes the alleged deprivation).

3 It must contain a caption including the name of the court and the names of all parties.
4 Fed. R. Civ. P. 10(a).

5 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
6 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,
7 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join
8 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims
9 against different defendants must be pursued in multiple lawsuits. "The controlling principle
10 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as
11 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple
12 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
13 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
14 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
15 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
16 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file
17 without prepayment of the required fees. 28 U.S.C. § 1915(g)." *George v. Smith*, 507 F.3d 605,
18 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
19 both commonality and same transaction requirements are satisfied).

20 The allegations must be short and plain, simple and direct and describe the relief plaintiff
21 seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v.*
22 *County of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). A long, rambling pleading,
23 including many defendants with unexplained, tenuous or implausible connection to the alleged
24 constitutional injury or joining a series of unrelated claims against many defendants very likely
25 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
26 plaintiff's action pursuant to Rule 41 of the Federal Rules of Civil Procedure for violation of

1 these instructions.

2 Plaintiff must sign the complaint. Fed. R. Civ. P. 11(a). By signing an amended
3 complaint, plaintiff certifies he has made reasonable inquiry and has evidentiary support for his
4 allegations and that for violation of this rule the court may impose sanctions sufficient to deter
5 repetition by plaintiff or others. Fed. R. Civ. P. 11.

6 A prisoner may bring no § 1983 action until he has exhausted such administrative
7 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*
8 *v. Churner*, 532 U.S. 731, 741 (2001). By signing an amended complaint plaintiff certifies his
9 claims are warranted by existing law, including the law that he exhaust administrative remedies,
10 and that for violation of this rule plaintiff risks dismissal of his entire action

11 Accordingly, it hereby is ordered that:

12 1. Plaintiff's request to proceed in forma pauperis is granted.

13 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
14 accordance with the notice to the Director of the California Department of Corrections and
15 Rehabilitation filed concurrently herewith.

16 3. Plaintiff's complaint is dismissed with leave to amend within 30 days. Plaintiff shall
17 file an original and one copy of the amended complaint, which must bear the docket number
18 assigned to this case and be titled "First Amended Complaint." Failure to comply with this order
19 will result in a recommendation that this action be dismissed.

20 Dated: June 29, 2010.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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