

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

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

ANTHONY FUIMAONO,

Plaintiff,

No. CIV S-08-1198 FCD EFB P

vs.

FAIRFIELD POLICE
DEPARTMENT, et al.,

Defendants.

ORDER

_____/

Plaintiff Anthony Fuimaono, a former pretrial detainee in Solano County’s Fairfield Jail, filed this pro se civil rights action under 42 U.S.C. § 1983 concerning the alleged use of excessive force by police in arresting him and subsequent allegedly inadequate medical treatment while detained. In addition to filing a complaint, plaintiff has filed an application to proceed *in forma pauperis*. This 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*

Plaintiff has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Dckt. No. 3. Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, plaintiff’s request to proceed *in forma pauperis* will be granted.

1 **II. Screening Order**

2 At the time of the filing of the complaint, plaintiff was detained at the Fairfield Jail.
3 Accordingly, plaintiff was, at that time, a “prisoner” for purposes of 28 U.S.C. § 1915A, and this
4 court must accordingly review his complaint under that section. 28 U.S.C. § 1915A(a)
5 (providing that a court must review “a complaint in a civil action in which a prisoner seeks
6 redress from a governmental entity or officer or employee of a governmental entity.”); *id.* at
7 § 1915A(c) (providing that a “prisoner” is “any person incarcerated or detained in any facility
8 who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of
9 criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary
10 program.”) On review under § 1915A, the court shall identify cognizable claims or dismiss the
11 complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to
12 state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant
13 who is immune from such relief.” *Id.* § 1915A(b).

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

22 A claim has facial plausibility when the plaintiff pleads factual content that allows
23 the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged. The plausibility standard is not akin to a “probability
25 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.

26 *Id.* (citations and quotation marks omitted).

1 Plaintiff has pled seven enumerated causes of action: (1) “deliberate indifference” in
2 connection with the use of allegedly excessive force to arrest him, in violation of the Fourteenth
3 Amendment; (2) “excessive force” “in violation of state law”; (3) assault and battery under
4 California law; (4) “violation of due process” and “equal protection” in connection with
5 plaintiff’s arrest and medical treatment; (5) “failure to adequately train” on the parts of
6 defendants City of Fairfield and Fairfield Police Chief Rainey; (6) “deliberate indifference” in
7 connection with the allegedly inadequate medical care provided to plaintiff while housed in the
8 jail, in violation of the “Fifth, Eighth, Ninth, and Fourteenth Amendments”; and (7) intentional
9 infliction of emotional distress. Plaintiff has named as defendants Fairfield Police Officer
10 Trojanowski, Fairfield Police Chief Rainey, the City of Fairfield, and Dr. Chris. Plaintiff further
11 states that he “is unaware of all the defendants who violated his rights and or the proper or
12 correct names thereto and will amend his complaint once the names, defendants and capacities
13 have been ascertained.”

14 The court finds that, for the limited purposes of § 1915A screening, the complaint states
15 cognizable claims for relief: (1) against defendants Trojanowski, City of Fairfield, and Rainey
16 for violating his rights under the Fourth Amendment to the United States Constitution in
17 connection with the allegedly excessive force used against him in his arrest and the policies
18 and/or failure to train that caused such excessive force to be used; (2) against currently unknown
19 defendants for violating his rights under the Fifth and Fourteenth Amendments for allegedly
20 failing to provide him with adequate medical treatment; (3) against defendant Trojanowski for
21 assault and battery in violation of California law; and (4) against defendants Trojanowski, City
22 of Fairfield, Rainey, and currently unknown persons for intentional infliction of emotional
23 distress under California law.

24 The complaint fails to state a cognizable claim for relief against any defendant for
25 violating the Fourteenth Amendment in connection with plaintiff’s arrest. The Fourth
26 Amendment is the exclusive source of constitutional protection against excessive force in the

1 course of arrests, investigatory stops, and other seizures; thus, such action cannot support a due
2 process claim. *Graham v. Connor*, 490 U.S. 386, 395 (1989). Thus, plaintiff's claim of
3 unconstitutional excessive force will be construed as a claim under the Fourth Amendment. To
4 the extent plaintiff has pled a violation of the Fourteenth Amendment's equal protection clause,
5 the court concludes that plaintiff has failed to state a cognizable claim. Plaintiff's complaint
6 contains no allegations of discrimination.

7 The complaint also fails to state a cognizable claim for relief against any defendant for
8 violating plaintiff's right to be free from cruel and unusual punishment (through deliberate
9 indifference to his serious medical needs) under the Eighth Amendment. As plaintiff's
10 allegations concern his pretrial detention (rather than any post-conviction incarceration), his
11 allegations of inadequate medical treatment must be analyzed under the due process clauses of
12 the Fifth and Fourteenth Amendments, rather than the Eighth Amendment. *Bell v. Wolfish*, 441
13 U.S. 520, 535 n.16 (1979). Plaintiff additionally grounds his inadequate medical care claim in
14 the Ninth Amendment. The court can conceive of no Ninth Amendment violation encompassed
15 by plaintiff's allegations. *See* U.S. CONST., Amend. 9 ("The enumeration in the Constitution, of
16 certain rights, shall not be construed to deny or disparage others retained by the people.")
17 Accordingly, plaintiff's claim of constitutionally inadequate medical care will be construed as a
18 claim under the due process clauses of the Fifth and Fourteenth Amendments and his Ninth
19 Amendment claim will be dismissed.

20 Plaintiff's claim of constitutionally inadequate medical care is deficient as to defendant
21 Chris, however. Plaintiff alleges only generally that Dr. Chris failed to properly medically treat
22 plaintiff and, incomprehensibly, that

23 Plaintiff after continuous interference with plaintiff's medically prescribed
24 medication Fexoral that repeatedly was stopped and interfered with by jail
25 medical personnel that resulted in the direct untreatment and exacerbated pain and
26 medical informalities in trying to maintain consistent medical treatment by Solano
Jail medical staff, Dr. Chris.

26 ///

1 The court cannot divine from these allegations what plaintiff alleges Dr. Chris did or failed to do
2 that constituted a failure to treat his medical conditions. Accordingly, plaintiff's claims against
3 Dr. Chris will be dismissed, and the court will grant plaintiff leave to amend the complaint to
4 attempt again to state a cause of action against Dr. Chris. No other defendant is identified in the
5 complaint as having interfered with plaintiff's medical treatment or otherwise causing him to
6 suffer constitutionally inadequate medical care. The court recognizes that other jail staff, whose
7 identities are currently unknown to plaintiff, may have interfered with plaintiff's medical
8 treatment. As plaintiff has stated facts supporting a claim under the Fifth and Fourteenth
9 Amendments for inadequate medical treatment, the court advises plaintiff to seek leave to amend
10 the complaint when the identities of such defendants are discovered.

11 Lastly, the complaint fails to state a cognizable state-law based "excessive force" claim
12 separate from the state law assault and battery and intentional infliction of emotional distress
13 claims. Plaintiff has not identified the law, separate from those tort doctrines, under which his
14 state-law "excessive force" claim is brought.

15 Plaintiff may proceed forthwith to serve defendants Trojanowski, Rainey, and City of
16 Fairfield with the complaint as narrowed by this order or he may delay serving any defendant
17 and attempt to state cognizable claims under the Ninth Amendment, the equal protection clause
18 of the Fourteenth Amendment, state law governing "excessive force," and/or against defendant
19 Chris for violating the due process clauses of the Fifth and Fourteenth Amendment for failing to
20 provide adequate medical care.

21 If plaintiff elects to attempt to amend his complaint, he has 30 days so to do. He is not
22 obligated to amend his complaint. However, if plaintiff elects to proceed forthwith with the
23 complaint as narrowed by this order, then within 30 days he must return materials for service of
24 process enclosed herewith. In this event the court will construe plaintiff's election as consent to
25 dismissal without prejudice of plaintiff's claims under the Ninth Amendment, the equal
26 protection clause of the Fourteenth Amendment, state law governing "excessive force," and

1 against defendant Chris for violating the due process clauses of the Fifth and Fourteenth
2 Amendment for failing to provide adequate medical care, and defendant Chris will be dismissed
3 from the action.

4 Any amended complaint must adhere to the following requirements:

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

8 It must show that the federal court has jurisdiction and that plaintiff's action is brought in
9 the right place, that plaintiff is entitled to relief if plaintiff's allegations are true, and must
10 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
11 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
12 *Johnson*, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if
13 he does an act, participates in another's act or omits to perform an act he is legally required to do
14 that causes the alleged deprivation).

15 The complaint must contain a caption including the name of the court and the names of
16 all parties. Fed. R. Civ. P. 10(a).

17 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
18 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,
19 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join
20 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims
21 against different defendants must be pursued in multiple lawsuits. "The controlling principle
22 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as
23 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple
24 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
25 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
26 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit

1 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
2 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file
3 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,
4 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
5 both commonality and same transaction requirements are satisfied). Plaintiff may not change the
6 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d
7 at 607 (no “buckshot” complaints).

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

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

20 Accordingly, the court hereby orders that:

- 21 1. Plaintiff’s request to proceed *in forma pauperis* is granted.
- 22 2. Plaintiff’s claims under the Ninth Amendment, the equal protection clause of the
23 Fourteenth Amendment, state law governing “excessive force,” and against defendant Chris for
24 violating the due process clauses of the Fifth and Fourteenth Amendment for failing to provide
25 adequate medical care are dismissed with leave to amend. Within 30 days of service of this
26 order, plaintiff may amend his complaint to attempt to state cognizable claims for denial of these

1 rights. Plaintiff is not obligated to amend his complaint.

2 4. The allegations in the pleading are sufficient at least to state cognizable claims: (1)
3 against defendants Trojanowski, City of Fairfield, and Rainey for violating his rights under the
4 Fourth Amendment to the United States Constitution in connection with the allegedly excessive
5 force used against him in his arrest and the policies and/or failure to train that caused such
6 excessive force to be used; (2) against currently unknown defendants for violating his rights
7 under the Fifth and Fourteenth Amendments for allegedly failing to provide him with adequate
8 medical treatment; (3) against defendant Trojanowski for assault and battery in violation of
9 California law; and (4) against defendants Trojanowski, City of Fairfield, Rainey, and currently
10 unknown persons for intentional infliction of emotional distress under California law. *See* 28
11 U.S.C. § 1915A. Service is therefore currently appropriate for defendants Trojanowski, Rainey,
12 and City of Fairfield. With this order the Clerk of the Court shall provide to plaintiff a blank
13 summons, a copy of the amended complaint filed October 23, 2008, three USM-285 forms and
14 instructions for service of process on defendants. Within 30 days of service of this order
15 plaintiff may return the attached Notice of Submission of Documents with the completed
16 summons, the completed USM-285 forms, and four copies of the October 23, 2008 amended
17 complaint. The court will transmit them to the United States Marshal for service of process
18 pursuant to Rule 4 of the Federal Rules of Civil Procedure. Defendants will be required to
19 respond to plaintiff's allegations within the deadlines stated in Rule 12(a)(1) of the Federal Rules
20 of Civil Procedure. In this event, the court will construe plaintiff's election to proceed forthwith
21 as consent to an order dismissing his defective claims without prejudice.

22 5. Failure to comply with this order will result in a recommendation that this action be
23 dismissed.

24 Dated: June 17, 2010.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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

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

ANTHONY FUIMAONO,

Plaintiff,

No. CIV S-08-1198 FCD EFB P

vs.

FAIRFIELD POLICE
DEPARTMENT, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

_____ /

Plaintiff hereby submits the following documents in compliance with the court's order
filed _____:

- 1 completed summons form
- 3 completed forms USM-285
- 4 copies of the February 5, 2008 Complaint

Dated:

Plaintiff