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

RICHARD WALLACE,

Plaintiff,

vs.

No. CIV S-09-0502 JAM EFB P

JERRY BROWN et. al.,

Defendants.

ORDER

Richard Wallace, an inmate confined at Solano County Jail, filed this pro se civil rights action under 42 U.S.C. § 1983. 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). For the reasons set forth below, the court finds that plaintiff's amended complaint fails to state any claims for which relief can be granted under § 1983, and dismisses it with leave to amend within 30 days.

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. 2. Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.

1 § 1915(b)(1) and (2).

2 **II. Screening Order**

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

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

17 A claim has facial plausibility when the plaintiff pleads factual content that allows
18 the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged. The plausibility standard is not akin to a “probability
20 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.

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

24 The Civil Rights Act under which this action was filed provides:

25 Every person who, under color of [state law] . . . subjects, or causes to be
26 subjected, any citizen of the United States . . . to the deprivation of any rights,
privileges, or immunities secured by the Constitution . . . shall be liable to the

1 party injured in an action at law, suit in equity, or other proper proceeding for
2 redress

3 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
4 establish the defendant's personal involvement in the constitutional deprivation or a causal
5 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.
6 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
7 (9th Cir. 1978)

8 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds it
9 does not state a cognizable claim. Plaintiff's complaint states:

10 the Attorney General denied me due process of law regarding
11 criminal history during the years of 2001-2003 and parole unit
12 supervisor Laura Campoy treated me with cruel and unusual
13 punishment and false imprisoned me during the years of 2001-
2003 and parole agent Martinez Geiger falsely arrested and denied
me equal protection law[.] Also the above parties violated my civil
liberties.

14 Dckt. No. 1 at 4.

15 Although the factual nature of plaintiff's claims are unclear, it appears that some of his
16 claims challenge the validity of his conviction or sentence. The Supreme Court has held that "a
17 state prisoner's § 1983 action is barred (absent prior invalidation)--no matter the relief sought
18 (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to
19 conviction or internal prison proceedings)--if success in that action would necessarily
20 demonstrate the invalidity of confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74,
21 81-82 (2005) (emphasis added); *see also Edwards v. Balisok*, 520 U.S. 641 (1997); *Heck v.*
22 *Humphrey*, 512 U.S. 477 (1994). For example, were plaintiff to succeed on his claims that
23 defendants violated his due process rights in his parole hearing, those findings would necessarily
24 implicate the constitutionality of plaintiff's current imprisonment. *See Heck*, 512 U.S. at 487.
25 Plaintiff has not demonstrated that his sentence has previously been invalidated. His claims
26 challenging the validity of his conviction or sentence should therefore be dismissed without

1 leave to amend.

2 However, it also appears that plaintiff may also have claims that do not challenge the
3 validity of his conviction or sentence. Thus, to proceed plaintiff must file an amended complaint
4 explaining his claims in greater factual detail.

5 Any amended complaint must adhere to the following requirements:

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

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

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

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

1 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
2 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
3 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file
4 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,
5 607 (7th Cir. 2007); see also Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
6 both commonality and same transaction requirements are satisfied).

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

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

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

24 Accordingly, the court hereby orders that:

25 1. Plaintiff’s request to proceed in forma pauperis is granted.

26 ///

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

4 3. The complaint is dismissed with leave to amend within 30 days. The amended
5 complaint must bear the docket number assigned to this case and be titled "First Amended
6 Complaint." Failure to comply with this order will result in a recommendation that this action be
7 dismissed. If plaintiff files an amended complaint stating a cognizable claim the court will
8 proceed with service of process by the United States Marshal.

9 Dated: May 3, 2010.

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11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
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