

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

JOE SPAND,

Plaintiff, No. CIV S-09-0552 EFB P

VS.

J. MARTEL, et al.,

Defendants. ORDER

Joe Spand, a former inmate at Mule Creek State Prison, filed this *pro se* civil rights under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed *in forma pauperis* and a motion for appointment of counsel. This proceeding was filed to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the assigned pursuant to plaintiff's consent. *See* E.D. Cal. L. R., Appx. A, at (k)(4).

I. Request to Proceed *In Forma Pauperis*

22 Plaintiff has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.
23 Dckt. No. 2. Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and
24 (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to
25 collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.
26 § 1915(b)(1) and (2).

1 **II. Request for Appointment of Counsel**

2 District courts lack authority to require counsel to represent indigent litigants in § 1983
3 cases. *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional
4 circumstances, the court may request counsel voluntarily to represent such a plaintiff. 28 U.S.C.
5 § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900
6 F.2d 1332, 1335-36 (9th Cir. 1990). The court finds that there are no exceptional circumstances
7 in this case.

8 **III. Screening Order**

9 Pursuant to 28 U.S.C. § 1915A, the court shall review “a complaint in a civil action in
10 which a prisoner seeks redress from a governmental entity or officer or employee of a
11 governmental entity.” 28 U.S.C. § 1915A(a). “On review, the court shall identify cognizable
12 claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous,
13 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
14 from a defendant who is immune from such relief.” *Id.* § 1915A(b). The court finds that the
15 complaint fails to state a cognizable claim against defendants and should therefore be dismissed
16 for the following reasons.

17 In this action, plaintiff alleges that defendant R. Dion fabricated a Rules Violation Report
18 (“RVR”) charging plaintiff with refusing a direct order (to accept a cellmate). Compl. at 25.¹ In
19 a hearing presided over by defendant J.K. Rogel and reviewed by defendant L. Olivas (*see id.* at
20 33 and 35), plaintiff was found guilty of the rules violation and assessed a loss of 30 days
21 behavioral credit, among other punishments. *Id.* at 36. Plaintiff seeks “\$50,000 for pain and
22 suffering.” *Id.* at 3.

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25 ¹ Plaintiff presents a bare-bones form complaint with many unnumbered attachments.
26 The page numbers used herein have been obtained by hand-numbering the complaint and
attachments consecutively.

1 The U.S. Supreme Court has held that a prisoner's claim for money damages does not
2 present cognizable claim under 42 U.S.C. § 1983 if a judgment in the prisoner's favor would
3 necessarily imply the invalidity of a deprivation of good-time credits, regardless of whether the
4 plaintiff actually seeks restoration of the lost credits. *Edwards v. Balisok*, 520 U.S. 641, 644,
5 647-48 (1997). Such a claim must instead be brought as a petition for writ of habeas corpus.
6 *Heck v. Humphrey*, 512 U.S. 477, 481 (1994); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973);
7 *Ramirez v. Galaza*, 334 F.3d 850, 855-56 (9th Cir. 2003). Plaintiff's allegations against
8 defendants are all grounded on his assertion that defendant Dion fabricated the RVR and that
9 discipline based on the fabricated RVR was unlawful. A judgment in plaintiff's favor on these
10 allegations would necessarily imply the invalidity of the deprivation of good-time credits
11 imposed on plaintiff based on the allegedly fabricated RVR. Accordingly, these allegations do
12 not present claims cognizable under 42 U.S.C. § 1983 unless and until plaintiff can prove that
13 the disciplinary finding has been reversed or expunged (such as by the issuance of a writ of
14 habeas corpus). *Ramirez*, 334 F.3d at 855-56 (quoting *Heck*, 512 U.S. at 486-87, 489). Plaintiff
15 has not demonstrated that the challenged disciplinary action has been invalidated. Thus, to
16 proceed plaintiff must file an amended complaint demonstrating the invalidation of the discipline
17 imposed based on the allegedly fabricated RVR.

18 Any 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). Plaintiff may not change the
20 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d
21 at 607 (no "buckshot" complaints).

22 The allegations must be short and plain, simple and direct and describe the relief plaintiff
23 seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v.*
24 *County of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). A long, rambling pleading,
25 including many defendants with unexplained, tenuous or implausible connection to the alleged
26 constitutional injury or joining a series of unrelated claims against many defendants very likely

1 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
2 plaintiff's action pursuant to Rule 41 of the Federal Rules of Civil Procedure for violation of
3 these instructions.

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

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

13 Accordingly, it hereby is ORDERED that:

14 1. Plaintiff's request to proceed *in forma pauperis* is granted.
15 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
16 accordance with the notice to the Director of the California Department of Corrections and
17 Rehabilitation filed concurrently herewith.

18 3. Plaintiff's request for appointment of counsel is denied.
19 4. Plaintiff's complaint is dismissed, with leave to amend, for plaintiff's failure to state a
20 claim. Within thirty days, plaintiff shall file an amended complaint demonstrating that the
21 challenged disciplinary action based on the allegedly fabricated rules violation report has been
22 set aside and otherwise complying with this order. *See* 28 U.S.C. § 1915A. The amended
23 complaint must bear the docket number assigned to this case and be titled "First Amended
24 Complaint." Failure to comply with this order will result in this action being dismissed without
25 prejudice to plaintiff filing a petition for writ of habeas corpus to challenge defendants' alleged
26 fabrication of the rules violation report and imposition of discipline based thereon, and without

1 prejudice to plaintiff filing a new civil rights action if such discipline is ever set aside. If
2 plaintiff files an amended complaint stating a cognizable claim the court will proceed with
3 service of process by the United States Marshal.

4 Dated: July 15, 2010.

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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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