

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

HOWARD SCOTT,

Plaintiff, No. CIV S-09-0851 EFB P

VS.

M. McDONALD,

Defendant. ORDER

Howard Scott, an inmate confined at the California Substance Abuse Treatment Facility, his pro se civil rights action under 42 U.S.C. § 1983 and proceeds in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is the undersigned pursuant to plaintiff's consent. *See* E.D. Cal. Local Rules, Appx. A, at 1. On September 23, 2009, the court directed plaintiff to file an amended complaint. Dckt. 4. On January 15, 2010, plaintiff filed an amended complaint.¹ Dckt. No. 24.

Pursuant to 28 U.S.C. § 1915A, the court shall review “a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a

¹ Subsequently, plaintiff filed two more complaints, which should have been docketed in a new civil rights action, rather than in this action, as they did not include this case number and were not designated as “amended” complaints. They also named new defendants and raised new claims.

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

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

13 A claim has facial plausibility when the plaintiff pleads factual content that allows
14 the court to draw the reasonable inference that the defendant is liable for the
15 misconduct alleged. The plausibility standard is not akin to a “probability
16 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.

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

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

21 Every person who, under color of [state law] . . . subjects, or causes to be
22 subjected, any citizen of the United States . . . to the deprivation of any rights,
23 privileges, or immunities secured by the Constitution . . . shall be liable to the
party injured in an action at law, suit in equity, or other proper proceeding for
redress . . .

24 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
25 establish the defendant’s personal involvement in the constitutional deprivation or a causal
26 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.

1 See *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
2 (9th Cir. 1978)

3 In the amended complaint, plaintiff names M. McDonald, and Officers Sharrb, Cooper,
4 Oateman, and Nelson as defendants. Plaintiff alleges that he is blind, and from January 2008 to
5 May 2008, defendants Sharrb and Cooper refused to honor plaintiff's request that he be fed in
6 his cell. Am. Compl., Dckt. No. 24, at 4. Plaintiff further claims that as of March 2008,
7 defendants Oateman and Nelson also refused to cell-feed plaintiff. *Id.* at 5. Oateman apparently
8 told plaintiff that he stopped cell-feeding him at defendant Sharrb's² direction. *Id.* Plaintiff
9 claims defendants violated his Eighth Amendment rights, as well as his rights under the
10 Americans with Disabilities Act (ADA). *Id.* at 4, 7-8.

11 To state a claim that the conditions of imprisonment violate the Eighth Amendment
12 prohibition on cruel and unusual punishment, plaintiff must allege a specific individual was
13 deliberately indifferent to some basic human need such as food, clothing, shelter, medical care or
14 safety. *See Wilson v. Seiter*, 501 U.S. 294, 303-04 (1991); *Rhodes v. Chapman*, 452 U.S. 337,
15 347 (1981). A prison official is deliberately indifferent when he knows of and disregards a risk
16 of injury or harm that "is not one that today's society chooses to tolerate." *See Helling v.*
17 *McKinney*, 509 U.S. 25, 36 (1993); *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

18 While plaintiff alleges he is blind, he does not allege any facts showing that he needed to
19 be fed in his cell. For example, plaintiff does not allege that he was unable to walk to the dining
20 area, that he had a medical chrono requiring that meals be provided in his cell, or that he
21 otherwise needed to be fed in his cell. Further, while plaintiff indicates that defendants Sharrb
22 and Cooper refused to cell-feed plaintiff from January 2008 to May 2008, plaintiff does not
23 indicate for what period of time defendants Oateman and Nelson allegedly refused to cell-feed
24 plaintiff. As to defendant McDonald, plaintiff fails to include any factual allegations. Plaintiff's
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26 ² Plaintiff appears to refer to defendant Sharrb interchangeably as defendant "Sharpe."

1 allegations are thus factually insufficient to state a cognizable Eighth Amendment claim, and are
2 dismissed with leave to amend.

3 In order to state a claim that a public program or service violated Title II of the ADA, a
4 plaintiff must show: (1) he is a “qualified individual with a disability”; (2) he was either
5 excluded from participation in or denied the benefits of a public entity’s services, programs, or
6 activities, or was otherwise discriminated against by the public entity; and (3) such exclusion,
7 denial of benefits, or discrimination was by reason of his disability. *McGary v. City of Portland*,
8 386 F.3d 1259, 1265 (9th Cir. 2004). An ADA plaintiff also “bears the burden of establishing
9 the elements of the prima facie case, including--if needed--the existence of a reasonable
10 accommodation that would enable him to participate in the program, service, or activity at
11 issue.” *Pierce v. County of Orange*, 526 F.3d 1190, 1217 (9th Cir. 2008) (internal quotation
12 marks omitted).

13 Because plaintiff fails to allege facts showing that he was unable to eat his meals in the
14 dining area, and needed to be fed in his cell, he necessarily fails to allege that he was excluded
15 from participation or denied the benefits of his institution’s services or otherwise discriminated
16 against. Plaintiff alleges in a conclusory manner that his rights under the ADA have been
17 violated, but his factual allegations are insufficient to state a claim that is plausible on its face.
18 *See Iqbal*, 129 S. Ct. at 1949.

19 Thus, to proceed plaintiff must file an amended complaint, curing the deficiencies
20 identified by the court in this order, and the September 23, 2009 screening order. The court
21 notes that the claims raised in plaintiff’s amended complaint are not the same as those raised in
22 the original complaint. The claims in the original complaint concerned inadequate medical and
23 dental care, the need to be housed in a lower tier, and being improperly handcuffed behind his
24 back. If plaintiff still wishes to pursue these claims, he must include them in an amended
25 complaint.

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1 Additionally, any amended complaint must adhere to the following requirements:

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

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

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

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

1 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
2 both commonality and same transaction requirements are satisfied). Plaintiff may not change the
3 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d
4 at 607 (no “buckshot” complaints).

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

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

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

22 Accordingly, it is hereby ORDERED that:

23 1. The Clerk of the Court is directed to open a new action and file the February 16, 2010
24 complaint and notice of lawsuit (Dckt. Nos. 27, 28), and the March 24, 2010 complaint (Dckt.
25 No. 29), in that action. These filings are stricken as improperly docketed in this action, and the
26 Clerk of the Court shall make a notation on the docket to that effect.

1 2. Plaintiff's January 15, 2010 amended complaint (Dckt. No. 24) is dismissed and
2 plaintiff may, within 30 days of the date this order is served, file an amended complaint in
3 accordance with this order and the September 23, 2009 screening order. The amended complaint
4 must bear the docket number assigned to this case and be titled "Second Amended Complaint."

5 3. The Clerk of the Court is directed to send to plaintiff a copy of the form used in this
6 court for the filing of a civil complaint pursuant to 42 U.S.C. § 1983.

7 4. Failure to comply with this order will result in this action being dismissed for failure
8 to state a claim.

9 Dated: June 29, 2010.



10 EDMUND F. BRENNAN
11 UNITED STATES MAGISTRATE JUDGE
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