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

GREGORY C. BONTEMPS,

Plaintiff,

No. CIV S-09-2115 EFB P

vs.

SOTAK, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Plaintiff's declaration 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. § 1915(b)(1) and (2).

Although plaintiff's declaration satisfies the requirements of section 1915(a), that does not end the matter. Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental

1 entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the
2 complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to
3 state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who
4 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, which, if accepted as true, “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 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds
4 that it does not state a cognizable claim against any defendant. Plaintiff claims that defendant
5 Sotak took plaintiff's right foot out of its air cast and stopped plaintiff's medication. Plaintiff
6 claims to be in pain everyday. Plaintiff does not explain why he had an air cast on his right foot
7 or why he had previously received medication. Plaintiff also claims that he is supposed to see an
8 outside doctor but that this has not happened yet. Plaintiff identifies Tidwell in his complaint,
9 but only alleges that Tidwell is a supervisor.

10 It appears that plaintiff intends to pursue a claim based on deliberate indifference to his
11 medical needs. To state a claim defendants provided constitutionally inadequate medical care,
12 plaintiff must allege acts or omissions evidencing identified defendants knew of and disregarded
13 plaintiff's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Farmer*, 511 U.S.
14 at 835-37. Plaintiff has not done so. The court also notes that neither defendant's negligence
15 nor plaintiff's general disagreement with the treatment he received suffices to state a claim.
16 *Estelle*, 429 U.S. at 106; *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988);
17 *Jackson v. McIntosh*, 90 F.3d 330, 331 (9th Cir. 1996).

18 Furthermore, plaintiff may not sue any supervisor on a theory that the supervisor is liable
19 for the acts of his or her subordinates. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981).
20 However, a supervisor may be held liable in his or her individual capacity "for his own culpable
21 action or inaction in the training, supervision or control of his subordinates." *Watkins v. City of*
22 *Oakland, Cal.*, 145 F.3d 1087, 1093 (9th Cir. 1998) (quoting *Larez v. City of Los Angeles*, 946
23 F.2d 630, 646 (9th Cir. 1991)). "A supervisor is only liable for constitutional violations of his
24 subordinates if the supervisor participated in or directed the violations, or knew of the violations
25 and failed to act to prevent them." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

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1 Plaintiff must file an amended complaint to proceed. Plaintiff's amended complaint,
2 should he file one, must clearly identify the individuals he intends to name as defendants.
3 Plaintiff must also include sufficient factual allegations linking each defendant to an act or
4 omission that would indicate a deprivation of plaintiff's federal rights.

5 Any amended complaint must show that the federal court has jurisdiction and that
6 plaintiff's action is brought in the right place, that plaintiff is entitled to relief if plaintiff's
7 allegations are true, and must contain a request for particular relief. Plaintiff must identify as a
8 defendant only persons who personally participated in a substantial way in depriving plaintiff of
9 a federal constitutional right. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person
10 subjects another to the deprivation of a constitutional right if he does an act, participates in
11 another's act or omits to perform an act he is legally required to do that causes the alleged
12 deprivation). If plaintiff contends he was the victim of a conspiracy, he must identify the
13 participants and allege their agreement to deprive him of a specific federal constitutional right.

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

1 § 1915(g).” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); *see also* Fed. R. Civ. P.
2 20(a)(2) (joinder of defendants not permitted unless both commonality and same transaction
3 requirements are satisfied).

4 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d
5 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any
6 heightened pleading standard in cases other than those governed by Rule 9(b).”); Fed. R. Civ. P.
7 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be
8 set forth in short and plain terms, simply, concisely and directly. *See Swierkiewicz v. Sorema*
9 *N.A.*, 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,
10 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff
11 must eliminate from plaintiff’s pleading all preambles, introductions, argument, speeches,
12 explanations, stories, griping, vouching, evidence, attempts to negate possible defenses,
13 summaries, and the like. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996) (affirming
14 dismissal of § 1983 complaint for violation of Rule 8 after warning); *see Crawford-El v. Britton*,
15 523 U.S. 574, 597 (1998) (reiterating that “firm application of the Federal Rules of Civil
16 Procedure is fully warranted” in prisoner cases). The court (and defendant) should be able to
17 read and understand plaintiff’s pleading within minutes. *McHenry*, 84 F.3d at 1177. A long,
18 rambling pleading, including many defendants with unexplained, tenuous or implausible
19 connection to the alleged constitutional injury or joining a series of unrelated claims against
20 many defendants very likely will result in delaying the review required by 28 U.S.C. § 1915 and
21 an order dismissing plaintiff’s action pursuant to Fed. R. Civ. P. 41 for violation of these
22 instructions.

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

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1 By signing an amended complaint he certifies he has made reasonable inquiry and has
2 evidentiary support for his allegations and that for violation of this rule the court may impose
3 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11. Prison rules
4 require plaintiff to obey all laws, including this one, and plaintiff may be punished by prison
5 authorities for violation of the court's rules and orders. See Cal. Code Regs. tit. 15, § 3005.

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 action.

11 Accordingly, the court hereby ORDERS 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. The complaint is dismissed with leave to amend within 30 days. The amended
17 complaint must bear the docket number assigned to this case and be titled "First Amended
18 Complaint." Failure to file an amended complaint will result in dismissal for failure to state a
19 claim. If plaintiff files an amended complaint stating a cognizable claim the court will proceed
20 with service of process by the United States Marshal.

21 Dated: February 1, 2010.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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