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

MARCUS C. JOY,

Plaintiff,

No. CIV S-09-2652 EFB P

vs.

MENON, et al.,

Defendants.

ORDER

Plaintiff is an inmate at California State Prison – Sacramento (“CSP-Sac”) proceeding without counsel in an action brought under 42 U.S.C. § 1983. The case was referred to the undersigned 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. His declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2), and accordingly, the request is granted.

However, 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 entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who

1 is immune from such relief.” *Id.* § 1915A(b).

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

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

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

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

18 Every person who, under color of [state law] . . . subjects, or causes to be
19 subjected, any citizen of the United States . . . to the deprivation of any rights,
20 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

21 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
22 establish the defendant’s personal involvement in the constitutional deprivation or a causal
23 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
24 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
25 (9th Cir. 1978).

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1 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A. It appears
2 that plaintiff intends to pursue claims based on allegations of: (1) prison officials' deliberate
3 indifference to his serious medical needs (in failing to properly respond to incidents in which he
4 has been "out on the ground" or has fallen to the ground) and (2) plaintiff's desire to eat no meat
5 based on his Christian beliefs. However, plaintiff has failed to state a cognizable claim against
6 any defendant on either issue.

7 Plaintiff does not allege facts showing how any defendant was personally involved in the
8 alleged deprivations of his federal rights. Plaintiff names as defendants "Menon" and one other,
9 whose name is not legible from the complaint but is perhaps "Dwight." Compl. at 2. Plaintiff's
10 factual allegations, however, contain no mention of the defendants named in the caption, alleging
11 only that an unspecified correctional officer failed to assist him when he was "on the floor," that
12 unspecified medical staff informed him that there was not much other than x-rays they could do
13 for him, and that he does not eat meat because he is a Christian and was told by unspecified
14 person(s) to speak to the chaplain about it. Compl. at 3-4. These allegations fail to make out
15 cognizable claims because they do not inform how each named defendant was personally
16 involved in the alleged constitutional deprivations.

17 As to plaintiff's free exercise of religion claim, the allegations additionally fail to contain
18 sufficient factual content for the court to draw the reasonable inference that any named defendant
19 is liable for the misconduct alleged. Plaintiff does not allege that any defendant took some act
20 that placed a substantial burden on plaintiff's observation of his religious beliefs. *See Hernandez*
21 *v. Comm'r*, 490 U.S. 680, 699 (1989).

22 Plaintiff must file an amended complaint to proceed. Plaintiff's amended complaint,
23 should he file one, must be legible and must clearly identify the individuals he intends to name
24 as defendants. Plaintiff must also include sufficient factual allegations linking each defendant to
25 an act or omission that would indicate a deprivation of plaintiff's federal rights.

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

10 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.
11 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant.
12 Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
13 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).
14 Unrelated claims against different defendants must be pursued in multiple lawsuits.

15 The controlling principle appears in Fed. R. Civ. P. 18(a): 'A party asserting a
16 claim . . . may join, [] as independent or as alternate claims, as many claims . . . as
17 the party has against an opposing party.' Thus multiple claims against a single
party are fine, but Claim A against Defendant 1 should not be joined with
unrelated Claim B against Defendant 2.

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

21 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d
22 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any
23 heightened pleading standard in cases other than those governed by Rule 9(b)."); Fed. R. Civ. P.
24 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be
25 set forth in short and plain terms, simply, concisely and directly. *See Swierkiewicz v. Sorema*
26 *N.A.*, 534 U.S. 506, 514 (2002) ("Rule 8(a) is the starting point of a simplified pleading system,

1 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff
2 should eliminate from his pleading all preambles, introductions, argument, speeches,
3 explanations, stories, griping, vouching, evidence, attempts to negate possible defenses,
4 summaries, and the like. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996) (affirming
5 dismissal of § 1983 complaint for violation of Rule 8 after warning); *see Crawford-El v. Britton*,
6 523 U.S. 574, 597 (1998) (reiterating that “firm application of the Federal Rules of Civil
7 Procedure is fully warranted” in prisoner cases). The court (and defendant) should be able to
8 read and understand plaintiff’s pleading within minutes. *McHenry*, 84 F.3d at 1177. A long,
9 rambling pleading, including many defendants with unexplained, tenuous or implausible
10 connection to the alleged constitutional injury or joining a series of unrelated claims against
11 many defendants very likely will result in delaying the review required by 28 U.S.C. § 1915A
12 and an order dismissing plaintiff’s action pursuant to Fed. R. Civ. P. 41 for violation of these
13 instructions.

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

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

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

1 Accordingly, the court hereby ORDERS that:

2 1. Plaintiff's request to proceed *in forma pauperis* is granted.

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

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

11 Dated: January 4, 2011.

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13 EDMUND F. BRENNAN
14 UNITED STATES MAGISTRATE JUDGE
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