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

JAMISI JERMAINE CALLOWAY,

Plaintiff,

No. CIV S-09-2907 EFB P

vs.

M. VEAL, et al.,

Defendants.

ORDER

\_\_\_\_\_/

Jamisi Jermaine Calloway, a prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983, and proceeds in forma pauperis.<sup>1</sup> On September 3, 2010, the court dismissed plaintiff’s complaint with leave to amend. Plaintiff filed an amended complaint on December 14, 2010 and that complaint is now before the court for screening.

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 governmental entity.” 28 U.S.C. § 1915A(a). “On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim

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<sup>1</sup> The case was referred by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. See E.D. Cal. Local Rules, Appx. A, at (k)(4).

1 upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune  
2 from such relief.” *Id.* § 1915A(b).

3 The court has reviewed plaintiff’s amended complaint and, for the limited purposes of  
4 § 1915A screening, finds that it states potentially cognizable Eighth Amendment claims against  
5 defendants Andreason and Veal.

6 However, plaintiff’s claims against Hubbard, McKenzie and Grannis must be dismissed  
7 with leave to amend as plaintiff fails to allege how these defendants were personally involved in  
8 violating his rights. It is plaintiff’s responsibility to allege facts to state a plausible claim for  
9 relief. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009); *Moss v. U.S. Secret Serv.*, 572 F.3d 962,  
10 969 (9th Cir. 2009). Since plaintiff does not make any factual allegations as to defendants  
11 Hubbard or McKenzie, he cannot proceed against them unless he cures these deficiencies in an  
12 amended complaint. That is, plaintiff must specifically link each defendant to an act or omission  
13 that allegedly violated plaintiff’s federal rights. Moreover, plaintiff’s only allegation against  
14 defendant Grannis is that Grannis denied plaintiff’s inmate appeal at the third level of review.  
15 Plaintiff may not impose liability on a defendant simply because the defendant played a role in  
16 processing plaintiff’s inmate appeals, as there are no constitutional requirements regarding how a  
17 grievance system is operated. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003)  
18 (holding that prisoner’s claimed loss of a liberty interest in the processing of his appeals does not  
19 violate due process because prisoners lack a separate constitutional entitlement to a specific  
20 prison grievance system).

21 Plaintiff also names Jane or John Doe as defendants. The use of Doe Defendants in  
22 federal court is problematic, *see Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980), and  
23 ultimately unnecessary. Should plaintiff learn through discovery the identities of parties he  
24 wishes to serve, he must promptly move pursuant to Rule 15 of the Federal Rules of Civil  
25 Procedure to file an amended complaint to add them as defendants. *See Brass v. County of Los*  
26 *Angeles*, 328 F.3d 1192, 1197-98 (9th Cir. 2003). If the timing of his amended complaint raises

1 questions as to the statute of limitations, plaintiff must satisfy the requirements of Rule 15(c).  
2 Rule 15(c), not the state practice of Doe pleading, is the controlling procedure for adding  
3 defendants who identities were discovered after commencement of the action.

4 Plaintiff may proceed forthwith to serve defendants Andreason and Veal and pursue his  
5 claims against only those defendants or he may delay serving any defendant and attempt to state  
6 a cognizable claim against defendants Hubbard, McKenzie and/or Grannis.

7 If plaintiff elects to attempt to amend his complaint to state a cognizable claim against  
8 defendants Hubbard, McKenzie and/or Grannis, he has 30 days so to do. He is not obligated to  
9 amend his complaint. However, if plaintiff elects to proceed forthwith against defendants  
10 Andreason and Veal, against whom he has stated a potentially cognizable claim for relief, then  
11 within 30 days he must return materials for service of process enclosed herewith. In this event  
12 the court will construe plaintiff's election as consent to dismissal of all claims against defendants  
13 Hubbard, McKenzie and Grannis, without prejudice.

14 Any amended complaint must adhere to the following requirements:

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

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

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

1 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.  
2 P. 18(a). Unrelated claims against different defendants must be pursued in multiple lawsuits.  
3 “The controlling principle appears in Fed. R. Civ. P. 18(a): ‘A party asserting a claim . . . may  
4 join, [] as independent or as alternate claims, as many claims . . . as the party has against an  
5 opposing party.’ Thus multiple claims against a single party are fine, but Claim A against  
6 Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims  
7 against different defendants belong in different suits, not only to prevent the sort of morass [a  
8 multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the  
9 required filing fees-for the Prison Litigation Reform Act limits to 3 the number of frivolous suits  
10 or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. §  
11 1915(g).” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2)  
12 (joinder of defendants not permitted unless both commonality and same transaction requirements  
13 are satisfied). Plaintiff may not change the nature of this suit by alleging new, unrelated claims  
14 in an amended complaint. *George*, 507 F.3d at 607 (no “buckshot” complaints).

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

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

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

7 Accordingly, the court hereby orders that:

8 1. Claims against defendants Hubbard, McKenzie and Grannis are dismissed with leave  
9 to amend. Within 30 days of service of this order, plaintiff may amend his complaint to attempt  
10 to state cognizable claims against these defendants. Plaintiff is not obligated to amend his  
11 complaint.


12 2. The allegations in the pleading are sufficient at least to state potentially cognizable  
13 claims against defendants Andreason and Veal. *See* 28 U.S.C. § 1915A. With this order the  
14 Clerk of the Court shall provide to plaintiff a blank summons, a copy of the complaint filed  
15 December 14, 2010, two USM-285 forms and instructions for service of process on defendants  
16 Andreason and Veal. Within 30 days of service of this order plaintiff may return the attached  
17 Notice of Submission of Documents with the completed summons, the completed USM-285  
18 forms, and three copies of the December 14, 2010 amended complaint. The court will transmit  
19 them to the United States Marshal for service of process pursuant to Rule 4 of the Federal Rules  
20 of Civil Procedure. Defendants Andreason and Veal will be required to respond to plaintiff's  
21 allegations within the deadlines stated in Rule 12(a)(1) of the Federal Rules of Civil Procedure.  
22 In this event, the court will construe plaintiff's election to proceed forthwith as consent to an  
23 order dismissing his defective claims against defendants Hubbard, McKenzie and Grannis  
24 without prejudice.

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3. Failure to comply with this order will result in this action being dismissed.

Dated: April 7, 2011.



EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE

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JAMISI JERMAINE CALLOWAY,

Plaintiff,

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vs.

M. VEAL, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

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In accordance with the court's order filed \_\_\_\_\_, plaintiff hereby elects to:

(1) \_\_\_\_\_ consent to the dismissal of defendants Hubbard, McKenzie and Grannis without prejudice, and submits the following documents:

1 completed summons form

2 completed forms USM-285

3 copies of the December 14, 2010 Amended Complaint

**OR**

(2) \_\_\_\_\_ delay serving any defendant and files a second amended complaint in an attempt to state cognizable claims against defendants Hubbard, McKenzie and Grannis.

Dated:

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Plaintiff