

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

CHAD SWANSON,

Plaintiff, No. CIV S-09-3245 EFB P

VS.

MICHAEL MARTEL, et al,

Defendants. ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On May 3, 2010, the court directed plaintiff to file an amended complaint. On June 26, 2010, plaintiff filed an amended complaint.<sup>1</sup>

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 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 upon which relief may be granted; or (2) seeks monetary relief

<sup>1</sup> The case was referred to the undersigned 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 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

2 The allegations in the amended complaint do not significantly differ from those in the  
3 original complaint. Plaintiff alleges defendants Martel, Duncan, Reaves, Feltner, and White “did  
4 not use clear, safe directives set in place for accident prevention,” which resulted in plaintiff  
5 injuring his neck and back by “falling over a hazardous water-spigot protruding from the ground  
6 . . . .” *See Am. Compl.* As previously explained to plaintiff, these allegations are insufficient for  
7 purposes of stating a cognizable Eighth Amendment claim. Dckt. No. 7 at 2. To state a claim  
8 that the conditions of imprisonment violate the Eighth Amendment prohibition on cruel and  
9 unusual punishment, plaintiff must allege a specific individual was deliberately indifferent to  
10 some basic human need such as food, clothing, shelter, medical care or safety. *See Wilson v.*  
11 *Seiter*, 501 U.S. 294, 303-04 (1991); *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). A prison  
12 official is deliberately indifferent when he knows of and disregards a risk of injury or harm that  
13 “is not one that today’s society chooses to tolerate.” *See Helling v. McKinney*, 509 U.S. 25, 36  
14 (1993); *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). As with the original complaint, plaintiff  
15 alleges defendants were negligent at worst, and does not set forth allegations demonstrating that  
16 any defendant acted with deliberate indifference.

17 Plaintiff also alleges that, despite injuries he received from falling over the water-spigot  
18 and his requests for medical attention, John and Jane Doe forced him to walk long distances to  
19 the dining room, refused to feed plaintiff in his cell, forced plaintiff to climb up to and from a top  
20 bed bunk, and refused to provide plaintiff with pain medication. Plaintiff claims they threatened  
21 him with disciplinary action if he continued requesting medical attention. The use of Doe  
22 defendants is not favored in the Ninth Circuit. *See Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th  
23 Cir. 1980). Further, unknown persons cannot be served with process until they are identified by  
24 their real names. Plaintiff must take steps promptly to discover the full name (i.e., first and last  
25 name) of each Doe defendant and provide that information to the court in an amendment to his  
26 pleading that explains what each such person did or failed to do that caused a violation of his

1 constitutional rights. *See Brass v. County of Los Angeles*, 328 F.3d 1192, 1195-98 (9th Cir.  
2 2003). The court will not investigate the names and identities of unnamed defendants. If, in an  
3 amended complaint, plaintiff fails to provide true names for the Doe defendants, and does not  
4 state a claim against any named defendant, this action will be dismissed without prejudice to  
5 suing the Doe defendants upon learning their identities.

6 For the foregoing reasons, the complaint is dismissed with leave to amend. Any  
7 amended complaint must adhere to the following requirements:

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

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

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

20 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.  
21 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,  
22 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join  
23 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims  
24 against different defendants must be pursued in multiple lawsuits. "The controlling principle  
25 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as  
26 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple

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

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

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

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

1 and that for violation of this rule plaintiff risks dismissal of his entire action

2       Accordingly, the court hereby orders that the amended complaint is dismissed with leave  
3 to amend within 30 days. The second amended complaint must bear the docket number assigned  
4 to this case and be titled "Second Amended Complaint." Failure to comply with this order will  
5 result this action being dismissed. If plaintiff files an amended complaint stating a cognizable  
6 claim the court will proceed with service of process by the United States Marshal.

7 Dated: September 23, 2010.

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9 EDMUND F. BRENNAN  
10 UNITED STATES MAGISTRATE JUDGE

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