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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. 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. His 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).

The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds it does not state a cognizable claim against any defendant.

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

2 Every person who, under color of [state law] . . . subjects, or causes to be
3 subjected, any citizen of the United States . . . to the deprivation of any rights,
4 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

5 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
6 establish the defendant’s personal involvement in the constitutional deprivation or a causal
7 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
8 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
9 (9th Cir. 1978).

10 Plaintiff names Michael Martel (Warden), Duncan Fallon (Chief Deputy Warden), L.B.
11 Reaves, Feltner and J.P. White as defendants, but he does not include any factual allegations
12 showing how any of them were personally involved in violating his federal rights. Plaintiff’s
13 complaint must therefore be dismissed.

14 Plaintiff attempts to impose liability on defendants for injuries he sustained after he fell
15 over a “protruding 4 inch water spigot located on the inmate recreation yard.” To state a claim
16 that the conditions of imprisonment violate the Eighth Amendment prohibition on cruel and
17 unusual punishment, plaintiff must allege a specific individual was deliberately indifferent to
18 some basic human need such as food, clothing, shelter, medical care or safety. *See Wilson v.*
19 *Seiter*, 501 U.S. 294, 303-04 (1991); *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). A prison
20 official is deliberately indifferent when he knows of and disregards a risk of injury or harm that
21 “is not one that today’s society chooses to tolerate.” *See Helling v. McKinney*, 509 U.S. 25, 36
22 (1993); *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Plaintiff alleges defendants were
23 negligent at worst, which is not sufficient for purposes of an Eight Amendment violation.

24 Plaintiff alleges that his medical needs have not been met, but he fails to link any
25 identifiable defendant to this claim. To state a claim defendants provided constitutionally
26 inadequate medical care, plaintiff must allege acts or omissions evidencing identified defendants

1 knew of and disregarded plaintiff's serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 106
2 (1976); *Farmer*, 511 U.S. at 835-37. Plaintiff has not done so. The court also notes that neither
3 defendant's negligence nor plaintiff's general disagreement with the treatment he received
4 suffices to state a claim. *Estelle*, 429 U.S. at 106; *Hutchinson v. United States*, 838 F.2d 390,
5 394 (9th Cir. 1988); *Jackson v. McIntosh*, 90 F.3d 330, 331 (9th Cir. 1996).

6 Plaintiff may also seek to impose liability on defendant Martel because Martel allegedly
7 responded to one of plaintiff's administrative appeals. Plaintiff may not impose liability on a
8 defendant simply he played a role in processing plaintiff's inmate appeals, as there are no
9 constitutional requirements regarding how a grievance system is operated. *See Ramirez v.*
10 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner's claimed loss of a liberty
11 interest in the processing of his appeals does not violate due process because prisoners lack a
12 separate constitutional entitlement to a specific prison grievance system).

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

22 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed.
23 R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant.
24 Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
25 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

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1 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d
2 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any
3 heightened pleading standard in cases other than those governed by Rule 9(b).”); Fed. R. Civ. P.
4 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be
5 set forth in short and plain terms, simply, concisely and directly. *See Swierkiewicz v. Sorema*
6 *N.A.*, 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,
7 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff
8 must eliminate from plaintiff’s pleading all preambles, introductions, argument, speeches,
9 explanations, stories, griping, vouching, evidence, attempts to negate possible defenses,
10 summaries, and the like. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996) (affirming
11 dismissal of § 1983 complaint for violation of Rule 8 after warning); *see Crawford-El v. Britton*,
12 523 U.S. 574, 597 (1998) (reiterating that “firm application of the Federal Rules of Civil
13 Procedure is fully warranted” in prisoner cases). The court (and defendant) should be able to
14 read and understand plaintiff’s pleading within minutes. *McHenry*, 84 F.3d at 1177. A long,
15 rambling pleading, including many defendants with unexplained, tenuous or implausible
16 connection to the alleged constitutional injury or joining a series of unrelated claims against
17 many defendants very likely will result in delaying the review required by 28 U.S.C. § 1915 and
18 an order dismissing plaintiff’s action pursuant to Fed. R. Civ. P. 41 for violation of these
19 instructions.

20 A district court must construe a pro se pleading “liberally” to determine if it states a
21 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an
22 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While
23 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of
24 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.
25 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
26 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is

1 plausible on its face.” *Id.* (quoting *Twombly*, 550 U.S. at 570).

2 A claim has facial plausibility when the plaintiff pleads factual content that allows
3 the court to draw the reasonable inference that the defendant is liable for the
4 misconduct alleged. The plausibility standard is not akin to a “probability
5 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.

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

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

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

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 action.

22 Accordingly, the court hereby orders that:

23 1. Plaintiff’s request to proceed *in forma pauperis* is granted.

24 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
25 accordance with the notice to the Director of the California Department of Corrections and
26 Rehabilitation filed concurrently herewith.

1 3. The complaint is dismissed with leave to amend within 30 days. The amended
2 complaint must bear the docket number assigned to this case and be titled "First Amended
3 Complaint." Failure to file an amended complaint will result in a recommendation this action be
4 dismissed for failure to state a claim. If plaintiff files an amended complaint stating a cognizable
5 claim the court will proceed with service of process by the United States Marshal.

6 Dated: May 3, 2010.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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