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

STEPHEN BERRY,

Plaintiff,

No. CIV S-10-0051 MCE EFB P

vs.

S.M. SALINAS, et al.,

Defendants.

ORDER

_____/

Stephen Berry, an inmate confined at Deuel Vocational Institute, filed this pro se civil rights action under 42 U.S.C. § 1983. On June 23, 2010, the court dismissed plaintiff’s complaint with leave to amend. On September 23, 2010, plaintiff filed an amended complaint. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

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 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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

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

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

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

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

20 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
21 establish the defendant’s personal involvement in the constitutional deprivation or a causal
22 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
23 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
24 (9th Cir. 1978).

25 Additionally, “[t]he Eighth Amendment’s prohibition against cruel and unusual
26 punishment protects prisoners not only from inhumane methods of punishment but also from

1 inhumane conditions of confinement.” *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
2 2006). Extreme deprivations are required to make out a conditions of confinement claim, and
3 only those deprivations denying the minimal civilized measure of life’s necessities are
4 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
5 503 U.S. 1, 9 (1992). Where a prisoner alleges injuries stemming from unsafe conditions of
6 confinement, prison officials may be held liable only if they acted with “deliberate indifference
7 to a substantial risk of serious harm.” *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998);
8 *Farmer v. Brennan*, 511 U.S. 825, 847 (1994). Mere negligence is insufficient to establish
9 deliberate indifference since “Eighth Amendment liability requires ‘more than ordinary lack of
10 due care for the prisoner’s interests or safety.’” *Farmer*, 511 U.S. at 835 (quoting *Whitley v.*
11 *Albers*, 475 U.S. 312, 319 (1986)).

12 Plaintiff’s “Statement of Claim” in his amended complaint, alleges as follows:

13 On May 13, 2009, while working in the Bakery at D.V.I. on the high speed mixer
14 [plaintiff] was injured and lost two fingers due to the malfunctioning of the high
15 speed mixer he was working on. The machine was known to be out of repair and
16 had several work orders on it. Corr. Baker II Buff and Jesse Jones Stationary
17 Engineer failed to follow proper lookout, tag out procedure which resulted in
18 [plaintiff’s] injury.

19 Compl., § IV. The court dismissed the original complaint in part, because plaintiff’s allegations
20 fell short of stating an Eighth Amendment claim, as plaintiff failed to demonstrate that the
21 defendants acted with deliberate indifference to plaintiff’s safety needs. Plaintiff has failed to
22 cure this defect in his amended complaint. The court has previously informed plaintiff that his
23 allegations must be sufficient to support a plausible claim for relief, which requires more than
24 the mere possibility of misconduct. *Iqbal*, 129 S.Ct. at 1949. Plaintiff’s very general and
25 conclusory allegations as to defendant Buff and Jones, do not support an Eighth Amendment
26 claim, because they do not suggest that these defendants acted with deliberate indifference to a
substantial risk of serious harm to plaintiff. At worst, plaintiff’s allegations imply negligent
conduct. Thus, the complaint will be dismissed with leave to amend.

1 To proceed plaintiff must file an amended complaint.

2 Any amended complaint must adhere to the following requirements:

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

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

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

15 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
16 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,
17 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join
18 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims
19 against different defendants must be pursued in multiple lawsuits. "The controlling principle
20 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as
21 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple
22 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
23 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
24 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
25 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
26 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file

1 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,
2 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
3 both commonality and same transaction requirements are satisfied). Plaintiff may not change the
4 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d
5 at 607 (no “buckshot” complaints).

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

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

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

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

6 Dated: November 8, 2010.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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