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

RICHARD BASSETT,

Plaintiff,

No. 2:10-cv-0539 KJN P

vs.

E. CALLISON, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302.

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's prison trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to

1 make monthly payments of twenty percent of the preceding month's income credited to
2 plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to
3 the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing
4 fee is paid in full. 28 U.S.C. § 1915(b)(2).

5 The court has reviewed plaintiff's complaint and, for the limited purposes of
6 § 1915A screening, finds that it states a cognizable claim against defendants Callison and Swart.¹
7 See 28 U.S.C. § 1915A.

8 For the reasons stated below, the court finds that the complaint does not state a
9 cognizable claim against defendant Staniff. The claim against defendant Staniff is dismissed
10 with leave to amend.

11 Plaintiff may proceed forthwith to serve defendants Callison and Swart and pursue
12 his claims against only those defendants, or he may delay serving any defendant and attempt to
13 state a cognizable claim against defendant Staniff.

14 If plaintiff elects to attempt to amend his complaint to state a cognizable claim
15 against defendant Staniff, he has thirty days so to do. He is not obligated to amend his
16 complaint.

17 Plaintiff alleges that defendant Staniff, a correctional sergeant, failed to take
18 appropriate action to protect plaintiff from the other defendants who are correctional officers.
19 However, plaintiff has failed to set forth sufficient facts regarding Staniff's involvement, instead
20 relying on conclusory allegations that Staniff is liable. Plaintiff's allegations against Staniff are
21 dismissed, but plaintiff is granted leave to amend.

22 Prison officials are required to take reasonable measures to guarantee the safety of
23 inmates and officials have a duty to protect prisoners from violence. Farmer v. Brennan, 511
24 U.S. 825, 832-33 (1994). To state a claim for threats to safety or failure to protect, an inmate

25
26 ¹ The defendant's name is spelled "Sweart" in the complaint, but plaintiff sent a letter saying the correct spelling of the name is "Swart".

1 must allege facts to support that he was incarcerated under conditions posing a substantial risk of
2 harm and that prison officials were “deliberately indifferent” to those risks. Farmer, 511 U.S. at
3 834. To adequately allege deliberate indifference, a plaintiff must set forth facts to support that a
4 defendant knew of, but disregarded, an excessive risk to inmate safety. Farmer, 511 U.S. at 837.
5 That is, “the official must both [have been] aware of facts from which the inference could be
6 drawn that a substantial risk of serious harm exist[ed], and he must also [have] draw[n] the
7 inference.” Farmer, 511 U.S. at 837.

8 Any amended complaint must show the federal court has jurisdiction, the action is
9 brought in the right place, and plaintiff is entitled to relief if plaintiff’s allegations are true. It
10 must contain a request for particular relief. Plaintiff must identify as a defendant only persons
11 who personally participated in a substantial way in depriving plaintiff of a federal constitutional
12 right. Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the
13 deprivation of a constitutional right if he does an act, participates in another’s act or omits to
14 perform an act he is legally required to do that causes the alleged deprivation).

15 In an amended complaint, the allegations must be set forth in numbered
16 paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a
17 single defendant. Fed. R. Civ. P. 18(a). If plaintiff has more than one claim based upon separate
18 transactions or occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P.
19 10(b).

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

1 not include any preambles, introductions, argument, speeches, explanations, stories, griping,
2 vouching, evidence, attempts to negate possible defenses, summaries, and the like. McHenry v.
3 Renne, 84 F.3d 1172, 1177-78 (9th Cir. 1996) (affirming dismissal of § 1983 complaint for
4 violation of Rule 8 after warning); see Crawford-El v. Britton, 523 U.S. 574, 597 (1998)
5 (reiterating that “firm application of the Federal Rules of Civil Procedure is fully warranted” in
6 prisoner cases). The court (and defendant) should be able to read and understand plaintiff’s
7 pleading within minutes. McHenry, 84 F.3d at 1179-80. A long, rambling pleading including
8 many defendants with unexplained, tenuous or implausible connection to the alleged
9 constitutional injury, or joining a series of unrelated claims against many defendants, very likely
10 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
11 plaintiff’s action pursuant to Fed. R. Civ. P. 41 for violation of these instructions.

12 A district court must construe a pro se pleading “liberally” to determine if it states
13 a claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff
14 an opportunity to cure them. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000).

15 While detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a
16 cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129
17 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

18 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that
19 is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 570).

20 A claim has facial plausibility when the plaintiff pleads factual
21 content that allows the court to draw the reasonable inference that
22 the defendant is liable for the misconduct alleged. The plausibility
23 standard is not akin to a “probability requirement,” but it asks for
24 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.

25 Id. (citations and quotation marks omitted). Although legal conclusions can provide the
26 framework of a complaint, they must be supported by factual allegations, and are not entitled to

1 the assumption of truth. *Id.* at 1950.

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

5 By signing an amended complaint, plaintiff certifies he has made reasonable
6 inquiry and has evidentiary support for his allegations, and for violation of this rule the court may
7 impose sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

8 A prisoner may not bring a § 1983 action until he has exhausted such
9 administrative remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is
10 mandatory. *Booth v. Churner*, 532 U.S. 731, 741 (2001). California prisoners or parolees may
11 appeal “any departmental decision, action, condition, or policy which they can demonstrate as
12 having an adverse effect upon their welfare.” Cal. Code Regs. tit. 15, §§ 3084.1, *et seq.* An
13 appeal must be presented on a CDC form 602 that asks simply that the prisoner “describe the
14 problem” and “action requested.” Therefore, this court ordinarily will review only claims against
15 prison officials within the scope of the problem reported in a CDC form 602 or an interview or
16 claims that were or should have been uncovered in the review promised by the department.
17 Plaintiff is further admonished that by signing an amended complaint he certifies his claims are
18 warranted by existing law, including the law that he exhaust administrative remedies, and that for
19 violation of this rule plaintiff risks dismissal of his entire action, including his claims against
20 defendants Callison and Swart.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Plaintiff’s request for leave to proceed in forma pauperis is granted.
- 23 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

24 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
25 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
26 Director of the California Department of Corrections and Rehabilitation filed concurrently

1 herewith.

2 3. The claim against defendant Staniff is dismissed with leave to amend. Within
3 thirty days of service of this order, plaintiff may amend his complaint to attempt to state
4 cognizable claims against these defendants. Plaintiff is not obliged to amend his complaint.

5 4. The allegations in the pleading are sufficient at least to state cognizable claims
6 against defendants Callison and Swart. See 28 U.S.C. § 1915A. With this order the Clerk of the
7 Court shall provide to plaintiff a blank summons, a copy of the pleading filed 3/5/10, 2 USM-285
8 forms and instructions for service of process on defendants Callison and Swart. Within thirty
9 days of service of this order plaintiff may return the attached Notice of Submission of Documents
10 with the completed summons, the completed USM-285 forms, and 3 copies of the endorsed
11 3/5/10 complaint. The court will transmit them to the United States Marshal for service of
12 process pursuant to Fed. R. Civ. P. 4. Defendants Callison and Swart will be required to respond
13 to plaintiff's allegations within the deadlines stated in Fed. R. Civ. P. 12(a)(1). In this event, the
14 court will construe plaintiff's election to proceed forthwith as consent to an order dismissing his
15 defective claims against defendant Staniff without prejudice.

16 5. Failure to comply with this order will result in a recommendation that this
17 action be dismissed.

18 DATED: April 5, 2010

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21 KENDALL J. NEWMAN
22 UNITED STATES MAGISTRATE JUDGE

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

RICHARD BASSETT,

Plaintiff,

No. 2:10-cv-0539 KJN P

vs.

E. CALLISON, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

_____ /

Plaintiff hereby submits the following documents in compliance with the court's order
filed _____:

- 1 completed summons form
- 2 completed forms USM-285
- 3 copies of the 3/5/10
Complaint

Plaintiff consents to the dismissal of defendants [insert names] without prejudice.

OR

_____ Plaintiff opts to file a first amended complaint and delay service of process.

Dated:

Plaintiff