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

LEE EDWARD HARRIS,

Plaintiff,

No. CIV S-10-1031 JAM EFB P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

ORDER

_____/

On October 7, 2010, the court dismissed plaintiff’s complaint with leave to amend. On October 13, 2010, and on October 20, 2010, plaintiff filed amended complaints. 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).

An amended complaint supercedes an earlier filed complaint. Therefore, the court has reviewed plaintiff’s October 20, 2010 amended complaint and, for the limited purposes of

1 § 1915A screening, finds that it states a cognizable due process claim against defendant Sisson.
2 However, plaintiff's remaining claims must be dismissed for failure to state a claim.

3 **I. Excessive Force Allegations**

4 Plaintiff alleges as follows. Defendant Hull called plaintiff a liar. In response, plaintiff
5 called Hull a liar. Plaintiff then got into a loud argument with another inmate. Hull told them to
6 keep it down. Plaintiff and the other inmate resumed their loud argument. Hull then said
7 "That's enough," and tapped plaintiff on his shoulder. Plaintiff told Hull not to touch him.
8 Plaintiff took a few steps away and then turned back to face Hull. Hull then grabbed plaintiff's
9 arm, pushed plaintiff against the wall, and said "Cuff up." Plaintiff asked, "Cuff up for what?"
10 Hull would not provide an explanation and as a result, they "began struggling." Hull pushed
11 plaintiff against some lockers, and then plaintiff pushed Hull off of him. The force of plaintiff's
12 push caused Hull to fall to the floor. Hull began grabbing at plaintiff, but plaintiff pushed Hull
13 against the wall. Plaintiff then climbed on top of Hull. Hull called for assistance. Plaintiff
14 pressed his arm against Hull's throat and held Hull down until responding staff arrived. Upon
15 arrival, defendant Dillard said to plaintiff, "What are you doing down there, get off of him."
16 Dillard hit plaintiff on the back two times. When plaintiff lifted the left side of his body so that
17 Hull could get up, either defendant Turner or Dillard hit plaintiff two times with a metal baton
18 across the back of his legs. Dillard placed his bent knee on plaintiff's throat. Plaintiff told
19 Dillard he could not breathe and Dillard responded, "I don't give a damn."

20 As plaintiff is aware, the Eighth Amendment prohibits the infliction of "cruel and
21 unusual punishments," and the "unnecessary and wanton infliction of pain" constitutes cruel and
22 unusual punishment. *Whitley v. Albers*, 475 U.S. 312, 319 (1986). In order to state a claim for
23 the use of excessive force in violation of the Eighth Amendment, plaintiff must allege facts that,
24 if proven, would establish that prison officials applied force "maliciously and sadistically to
25 cause harm," rather than in a good-faith effort to maintain or restore discipline. *Hudson v.*
26 *McMillian*, 503 U.S. 1, 6-7 (1992). Plaintiff's allegations fail to suggest that defendants applied

1 force maliciously and sadistically to cause harm. Rather, given plaintiff's allegations of talking
2 back to Hull, disobeying his orders, resisting him, and physically assaulting and pinning him
3 down, the force allegedly applied by defendants appears to have been done in a good-faith effort
4 to maintain or restore discipline. Claims against these defendants are therefore dismissed.

5 **II. Remaining Allegations**

6 Plaintiff's remaining allegations consist of the following. As a result of the incident with
7 Hull, plaintiff was charged with and found guilty of attempted murder of a peace officer.
8 Apparently in connection with the proceedings leading to the determination of guilt, plaintiff
9 claims defendant Cochoran "signed his name upon the CDCR 837" instead of letting defendant
10 Felker sign his name. He claims further that defendant McDonald will not release plaintiff from
11 the security housing unit, and that defendant Drieth stated in a memorandum that plaintiff
12 "makes no allegations of staff misconduct" Plaintiff also claims that defendant Grannis told
13 him that any further submissions from plaintiff regarding his inmate appeal would be
14 confiscated, that he submitted a complaint for the "Government Claims Program" to defendant
15 Tinetti.

16 The court finds that these allegations are so vague and conclusory that they fail to state
17 any claim upon which relief could be granted. Accordingly, they too, must be dismissed.

18 To the extent plaintiff intends to bring a due process claim, the court notes, that the Due
19 Process Clause protects prisoners from being deprived of liberty without due process of law.
20 *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974). In a disciplinary proceeding where a liberty
21 interest is at stake, due process requires that minimum procedural requirements be met,
22 including: (1) written notice of the charges; (2) at least 24 hours between the time the prisoner
23 receives written notice and the time of the hearing, so that the prisoner may prepare his defense;
24 (3) a written statement by the fact finders of the evidence they rely on and reasons for taking
25 disciplinary action; (4) the right of the prisoner to call witnesses in his defense, when permitting
26 him to do so would not be unduly hazardous to institutional safety or correctional goals; and (5)

1 legal assistance to the prisoner where the prisoner is illiterate or the issues presented are legally
2 complex. *Wolff*, 418 U.S. at 564-70.

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

9 **III. Leave to Amend**

10 Plaintiff may proceed forthwith to serve defendant Sisson and pursue his due process
11 claim or he may delay serving Sisson and attempt to state a cognizable claim against defendants
12 Hull, Dillard, Turner, Cochoran, Felker, McDonald, Drieth, Grannis or Tinetti.

13 If plaintiff elects to attempt to amend his complaint to state a cognizable claim against
14 defendants Hull, Dillard, Turner, Cochoran, Felker, McDonald, Drieth, Grannis or Tinetti, he has
15 30 days so to do. He is not obligated to amend his complaint. However, if plaintiff elects to
16 proceed forthwith against defendant Sisson, against whom he has stated a cognizable due process
17 claim, then within 30 days he must return materials for service of process enclosed herewith. In
18 this event the court will construe plaintiff's election as consent to dismissal of all claims against
19 defendants Hull, Dillard, Turner, Cochoran, Felker, McDonald, Drieth, Grannis and Tinetti,
20 without prejudice.

21 Any amended complaint must adhere to the following requirements:

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

25 It must show that the federal court has jurisdiction and that plaintiff's action is brought in
26 the right place, that plaintiff is entitled to relief if plaintiff's allegations are true, and must

1 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
2 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
3 *Johnson*, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if
4 he does an act, participates in another’s act or omits to perform an act he is legally required to do
5 that causes the alleged deprivation).

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

8 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
9 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,
10 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join
11 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims
12 against different defendants must be pursued in multiple lawsuits. “The controlling principle
13 appears in Fed. R. Civ. P. 18(a): ‘A party asserting a claim . . . may join, [] as independent or as
14 alternate claims, as many claims . . . as the party has against an opposing party.’ Thus multiple
15 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
16 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
17 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
18 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
19 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file
20 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,
21 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
22 both commonality and same transaction requirements are satisfied). Plaintiff may not change the
23 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d
24 at 607 (no “buckshot” complaints).

25 The allegations must be short and plain, simple and direct and describe the relief plaintiff
26 seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v.*

1 *County of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). A long, rambling pleading,
2 including many defendants with unexplained, tenuous or implausible connection to the alleged
3 constitutional injury or joining a series of unrelated claims against many defendants very likely
4 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
5 plaintiff's action pursuant to Rule 41 of the Federal Rules of Civil Procedure for violation of
6 these instructions.

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

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

17 Accordingly, the court hereby orders that:

18 1. Claims against defendants Hull, Dillard, Turner, Cochoran, Felker, McDonald, Drieth,
19 Grannis and Tinetti are dismissed with leave to amend. Within 30 days of service of this order,
20 plaintiff may amend his complaint to attempt to state cognizable claims against these defendants.
21 Plaintiff is not obligated to amend his complaint.

22 2. The allegations in the pleading are sufficient at least to state a cognizable due process
23 claim against defendant Sisson. *See* 28 U.S.C. § 1915A. With this order the Clerk of the Court
24 shall provide to plaintiff a blank summons, a copy of the complaint filed October 20, 2010, one
25 USM-285 form and instructions for service of process on defendant Sisson. Within 30 days of
26 service of this order plaintiff may return the attached Notice of Submission of Documents with

1 the completed summons, the completed USM-285 forms, and two copies of the October 20, 2010
2 amended complaint. The court will transmit them to the United States Marshal for service of
3 process pursuant to Rule 4 of the Federal Rules of Civil Procedure. Defendant Sisson will be
4 required to respond to plaintiff's allegations within the deadlines stated in Rule 12(a)(1) of the
5 Federal Rules of Civil Procedure. In this event, the court will construe plaintiff's election to
6 proceed forthwith as consent to an order dismissing his defective claims against defendants Hull,
7 Dillard, Turner, Cochoran, Felker, McDonald, Drieth, Grannis and Tinetti without prejudice.

8 3. Failure to comply with this order will result in a recommendation that this action be
9 dismissed.

10 Dated: December 10, 2010.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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

LEE EDWARD HARRIS,

Plaintiff,

No. CIV S-10-1031 JAM EFB P

vs.

HIGH DESERT STATE PRISON, et al.,

Defendants.

NOTICE OF SUBMISSION OF DOCUMENTS

_____ /

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

(1) _____ consent to the dismissal of defendants Hull, Dillard, Turner, Cochoran, Felker, McDonald, Drieth, Grannis and Tinetti without prejudice, and submits the following documents:

- 1 completed summons form
- 1 completed forms USM-285
- 2 copies of the October 20, 2010 Amended Complaint

OR

(2) _____ delay serving defendant Sisson and files a second amended complaint in an attempt to state cognizable claims against defendants Hull, Dillard, Turner, Cochoran, Felker, McDonald, Drieth, Grannis and Tinetti.

Dated:

Plaintiff