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

DARRYL LEE JOHNSON,

Plaintiff,

No. CIV S-10-1034 GEB EFB P

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Defendants.

ORDER

Darryl Lee Johnson filed this pro se civil rights action under 42 U.S.C. § 1983 when he was a prisoner at California Men’s Colony. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted the affidavit required by § 1915(a) showing that he is unable to prepay fees and costs or give security therefor. Accordingly, the request to proceed *in forma pauperis* will be granted. 28 U.S.C. § 1915(a).

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,

1 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
2 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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

11 A claim has facial plausibility when the plaintiff pleads factual content that allows
12 the court to draw the reasonable inference that the defendant is liable for the
13 misconduct alleged. The plausibility standard is not akin to a “probability
14 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.

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

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

19 Every person who, under color of [state law] . . . subjects, or causes to be
20 subjected, any citizen of the United States . . . to the deprivation of any rights,
21 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

22 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
23 establish the defendant’s personal involvement in the constitutional deprivation or a causal
24 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
25 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
26 (9th Cir. 1978).

1 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds it
2 does not state a cognizable claim. Plaintiff alleges that he is a sex offender and was placed on
3 parole for failing to register. One of the conditions of his parole was that he not possess or own
4 pornography or frequent places which sold or engaged in pornography. He alleges that he was
5 charged with a parole violation for having a nude photo of a woman on his laptop, and that he
6 accepted a sentencing offer of five months. He asks that the court "make that condition of parole
7 invalid" and that he be monetarily compensated for the incarceration.

8 If plaintiff seeks to challenge the constitutionality of the condition of his parole, he may
9 not do so in this action unless he demonstrates that his sentence has been invalidated. A claim
10 for damages based on an allegedly wrongful conviction or sentence that has not been invalidated
11 is not cognizable under § 1983. The United States Supreme Court in *Heck v. Humphrey*, 512
12 U.S. 477 (1994), determined that a civil rights action which implicates the validity of a criminal
13 conviction cannot be brought until the conviction or sentence has been reversed on direct appeal.
14 More precisely, a § 1983 plaintiff must prove that the conviction or sentence has been reversed
15 on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
16 make such determination, or called into question by a federal court's issuance of a writ of habeas
17 corpus, 28 U.S.C. § 2254. Because plaintiff has failed to allege or otherwise present evidence
18 that he was convicted, or that his conviction has been invalidated, expunged or reversed, this
19 aspect of plaintiff's claim fails. Thus, to proceed plaintiff must file an amended complaint.

20 Any amended complaint must adhere to the following requirements:

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

24 It must show that the federal court has jurisdiction and that plaintiff's action is brought in
25 the right place, that plaintiff is entitled to relief if plaintiff's allegations are true, and must
26 contain a request for particular relief. Plaintiff must identify as a defendant only persons who

1 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
2 *Johnson*, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if
3 he does an act, participates in another’s act or omits to perform an act he is legally required to do
4 that causes the alleged deprivation).

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

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

24 The allegations must be short and plain, simple and direct and describe the relief plaintiff
25 seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v.*
26 *County of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). A long, rambling pleading,

1 including many defendants with unexplained, tenuous or implausible connection to the alleged
2 constitutional injury or joining a series of unrelated claims against many defendants very likely
3 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
4 plaintiff's action pursuant to Rule 41 of the Federal Rules of Civil Procedure for violation of
5 these instructions.

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

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

15 Accordingly, it is hereby ORDERED that:

16 1. Plaintiff's request to proceed in forma pauperis is granted.

17 2. The complaint is dismissed with leave to amend within 30 days. The amended
18 complaint must bear the docket number assigned to this case and be titled "First Amended
19 Complaint." Failure to comply with this order will result in a recommendation that this action be
20 dismissed.

21 Dated: October 18, 2010.

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23 EDMUND F. BRENNAN
24 UNITED STATES MAGISTRATE JUDGE
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