

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

JIMMY L. DUCOTE,

Plaintiff, No. CIV S-10-1531 EFB P

VS.

STATE OF CALIFORNIA, et al.,

Defendants. ORDER

Jimmy L. Ducote, an inmate confined at the Monroe Detention Center, filed this pro se  
action under 42 U.S.C. § 1983. 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 202 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's  
application. *See* E.D. Cal. Local Rules, Appx. A, at (k)(4) .

## I. Request to Proceed In Forma Pauperis

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff's application 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).

1      **II.      Screening Order**

2           Pursuant to 28 U.S.C. § 1915A, the court shall review “a complaint in a civil action in  
3      which a prisoner seeks redress from a governmental entity or officer or employee of a  
4      governmental entity.” 28 U.S.C. § 1915A(a). “On review, the court shall identify cognizable  
5      claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous,  
6      malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief  
7      from a defendant who is immune from such relief.” *Id.* § 1915A(b).

8           To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
9      (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
10     the alleged violation was committed by a person acting under the color of state law. *West v.*  
11     *Atkins*, 487 U.S. 42, 48 (1988).

12           A district court must construe a pro se pleading “liberally” to determine if it states a  
13     claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an  
14     opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While  
15     detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of  
16     action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.  
17     1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff  
18     must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
19     plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

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

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

1 Plaintiff's complaint violates Rule 8(a) of the Federal Rules of Civil Procedure. The  
2 complaint is so prolix and obscure that the court cannot reasonably discharge its responsibility  
3 under § 1915A until plaintiff complies with the pleading requirements set forth in Rule 8. This  
4 rule requires the pleader to set forth his averments in a simple, concise, and direct manner. The  
5 degree of simplicity and conciseness required depends on the subject matter of the litigation, the  
6 nature of the claims or defenses presented and the number of parties involved. Wright & Miller,  
7 *Federal Practice & Procedure*, vol. 5 § 1281 & n. 12 (1990) (explaining that an antitrust or  
8 copyright pleading due to its complexity, must be pleaded with more detail than a simple  
9 negligence complaint). Before undertaking to determine whether the complaint may have merit,  
10 the court may insist upon compliance with its rules. *See McNeil v. United States*, 508 U.S. 106,  
11 113 (1993) (federal rules apply to all litigants, including prisoners lacking access to counsel);  
12 *see also Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (encouraging "firm application" of  
13 federal rules in prisoner cases).

14 In reviewing plaintiff's complaint, the court is required to guess who is being sued for  
15 what. If the pleading were served in its present form it would not give defendants fair notice of  
16 the claims against them and their best guess about the nature of plaintiff's complaint may be  
17 quite different than the court's. *See, McHenry v. Renne*, 84 F.3d 1172, 1170-78 (9th Cir. 1996)  
18 (court should be able to read the complaint in minutes, not hours, and may consider the rights of  
19 defendants to be free from costly and harassing litigation and other litigants waiting their turns to  
20 have other matters resolved); *see also, Nevijel v. North Coast Life Insurance Co.*, 651 F.2d 671,  
21 674-75 (9th Cir. 1971); *Von Poppenheim v. Portland Boxing & Wrestling Commission*, 442 F.2d  
22 1047, 1049-50 (9th Cir. 1971).

23 Plaintiff need not identify the law that makes the alleged conduct wrong. He may use  
24 his own language to state, simply and directly, the wrong that has been committed and clearly  
25 explain how each state actor identified as a defendant was involved and what relief plaintiff  
26 requests of each defendant. *Jones v. Community Redevelopment Agency of the City of Los*

1      *Angeles*, 733 F.2d 646 (9th Cir. 1984); *Johnson v. Duffy*, 588 F.2d 740 (9th Cir. 1978).

2      Plaintiff names Yolo County as a defendant. Municipalities (and their departments) may  
3      be sued under § 1983 only upon a showing that an official policy or custom caused the  
4      constitutional tort. *See Mt. Healthy City Sch. Dist. Bd. of Ed. v. Doyle*, 429 U.S. 274, 280  
5      (1977); *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Haugen v.*  
6      *Brosseau*, 351 F.3d 372, 393 (9th Cir. 2003) (granting summary judgment to city and city police  
7      department under *Monell*). “A local government entity cannot be held liable under § 1983 unless  
8      the plaintiff alleges that the action inflicting injury flowed from either an explicitly adopted or a  
9      tacitly authorized [governmental] policy.” *Ortez v. Wash. County*, 88 F.3d 804, 811 (9th Cir.  
10     1996) (citation and quotations omitted) (alteration in original). “[L]ocal governments, like any  
11     other § 1983 ‘person,’ . . . may be sued for constitutional deprivations visited pursuant to  
12     governmental ‘custom’ even though such a custom has not received formal approval through the  
13     body’s official decisionmaking channels.” *Monell*, 436 U.S. at 690-91.

14     The court notes that plaintiff has also named the “Prosecution for Yolo County  
15     California” as a defendant. To the extent plaintiff seeks to pursue claims under § 1983 against  
16     prosecutorial defendants, plaintiff is reminded that “[p]rosecutors are absolutely immune from  
17     liability under § 1983 for their conduct insofar as it is ‘intimately associated’ with the judicial  
18     phase of the criminal process.” *Botello v. Gammick*, 413 F.3d 971, 975 (9th Cir. 2005) (quoting  
19     *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). Prosecutors are fully protected by absolute  
20     immunity when performing traditional activities related to the initiation and presentation of  
21     criminal prosecutions. *Imbler*, 424 at 430-31; *Botello*, 413 F.3d at 976 (it is “well established  
22     that a prosecutor has absolute immunity for the decision to prosecute a particular case.”). Thus,  
23     even charges of malicious prosecution, falsification of evidence, coercion of perjured testimony  
24     and concealment of exculpatory evidence will be dismissed on grounds of prosecutorial  
25     immunity. *See Stevens v. Rifkin*, 608 F. Supp. 710, 728 (N.D. Cal. 1984).

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1           Additionally, the court notes that plaintiff has named the State of California and  
2 Louisiana Courts a defendants. Plaintiff may not pursue claims against these defendants, as they  
3 are not “persons” under § 1983. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989);  
4 *see also Allison v. California Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969) (state agency  
5 such as San Quentin State Prison is not a person within meaning of Civil Rights Act).

6           If plaintiff wishes to continue this litigation he must file an amended complaint. A  
7 prisoner pursuing civil rights claims without counsel, like all other litigants, is required to obey  
8 the court’s orders, including an order to amend his pleading. *Ferdik v. Bonzelet*, 963 F.2d 1258,  
9 1260-61 (9th Cir. 1992); *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). His failure to  
10 obey the court’s orders and the local and federal rules and meet his responsibilities in  
11 prosecuting this action may justify dismissal, including dismissal with prejudice. *Ferdik*, 963  
12 F.2d at 1262-63 (affirming dismissal with prejudice for pro se prisoner’s failure to comply with  
13 order requiring filing of amended civil rights complaint); *Pagtalunan*, 291 F.3d at 642 (affirming  
14 dismissal with prejudice for pro se prisoner’s failure to comply with order requiring filing of  
15 amended habeas petition); *Moore v. United States*, 193 F.R.D. 647, 653 (N.D. Cal. 2000)  
16 (denying motion for leave to file third amended complaint and dismissing action with prejudice  
17 for pro se plaintiff’s failure to comply with Rule 8); *Franklin v. Murphy*, 745 F.2d 1221, 1232-33  
18 (9th Cir. 1984) (affirming dismissal with prejudice for pro se prisoner’s failure to prosecute);  
19 *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1988) (affirming dismissal without prejudice for  
20 pro se prisoner’s failure to comply with local rule requiring he notify the court of any change of  
21 address).

22           Plaintiff’s amended complaint must adhere to the following requirements:

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

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

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

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

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

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

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

18           Accordingly, it hereby is ordered that:

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

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

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1           3. Plaintiff's complaint is dismissed with leave to amend within 30 days. Any amended  
2 complaint must bear the docket number assigned to this case and be titled "First Amended  
3 Complaint." Failure to comply with this order will result in this action being dismissed.

4 Dated: March 23, 2011.

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6 EDMUND F. BRENNAN  
7 UNITED STATES MAGISTRATE JUDGE  
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