

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

ANDRE RAMON CRAVER,

Plaintiff, No. CIV S-10-1880 EFB P

VS.

SACRAMENTO COUNTY,

Defendant. ORDER

Andre Ramon Craver, an inmate confined at High Desert State Prison, 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. Dckt. No. 4. 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.

1 § 1915(b)(1) and (2).

2 **II. Screening Order**

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

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

17 A claim has facial plausibility when the plaintiff pleads factual content that allows
18 the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged. The plausibility standard is not akin to a “probability
20 requirement,” but it asks for more than a sheer possibility that a defendant has
21 acted unlawfully. Where a complaint pleads facts that are merely consistent with a
22 defendant’s liability, it stops short of the line between possibility and plausibility
23 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.

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

28 Every person who, under color of [state law] . . . subjects, or causes to be
29 subjected, any citizen of the United States . . . to the deprivation of any rights,
30 privileges, or immunities secured by the Constitution and laws, shall be liable to

1 the party injured in an action at law, suit in equity, or other proper proceeding for
2 redress . . .

3 42 U.S.C. § 1983. “[A] claim for violation of state law is not cognizable under § 1983.”
4 *Cornejo v. County of San Diego*, 504 F.3d 853, 855 n.3 (9th Cir. 2007). In addition, an
5 individual defendant is not liable on a civil rights claim unless the facts establish the defendant’s
6 personal involvement in the deprivation of a federal right or a causal connection between the
7 defendant’s wrongful conduct and the alleged deprivation. *See Hansen v. Black*, 885 F.2d 642,
8 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).

9 The court has reviewed plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and finds it
10 does not state a cognizable claim. Plaintiff alleges that defendant Sacramento County has
11 deprived him of certain constitutional rights by not paying for an attorney to represent him in
12 pursuing a motion under California Penal Code § 1405. That statute provides: “A person who
13 was convicted of a felony and is currently serving a term of imprisonment may make a written
14 motion before the trial court that entered the judgment of conviction in his or her case, for
15 performance of forensic deoxyribonucleic acid (DNA) testing.” Cal. Pen. Code § 1405(a). It
16 further provides that counsel must be appointed to an indigent defendant who wishes to prepare a
17 motion for DNA testing upon a request that conforms to certain requirements. *Id.* § 1405(b). In
18 plaintiff’s case, the Sacramento County Superior Court granted his request for counsel to prepare
19 a § 1405 motion, but, because the California Legislature has suspended funding for counsel
20 under § 1405 at present, ordered that plaintiff’s representation begin only when funding is
21 restored by the legislature. Petitioner alleges that this order has deprived him of his rights to
22 counsel, access to the courts, and equal protection of the laws.

23 “[A] criminal defendant has no right to counsel beyond his first appeal in pursuing state
24 discretionary or collateral review[.]” *Coleman v. Thompson*, 501 U.S. 722, 756 (1991). Thus,
25 plaintiff has no constitutional right to counsel in a § 1405 proceeding. Denial of counsel to an
26 indigent person in such a proceeding does not violate the Equal Protection Clause of the

1 Fourteenth Amendment. *Ross v. Moffitt*, 417 U.S. 600, 612 (1974). Thus, plaintiff's claims that
2 he has been denied his rights to counsel and equal protection lack facial plausibility, because he
3 has not alleged facts that would establish violation of those constitutional provisions.

4 Plaintiff's allegations that he was deprived of counsel in a collateral DNA proceeding
5 under § 1405 do not state a plausible claim for denial of access to the courts, either, as the right
6 to access the courts does not require the state to enable a prisoner to litigate effectively by, for
7 example, appointing counsel. *Lewis v. Carey*, 518 U.S. 343, 354 (1996).

8 To the extent plaintiff alleges that the state court's order violates § 1405 or other state
9 law, such a claim does not arise under the federal Constitution or laws and is thus not cognizable
10 in this federal civil rights action. *Cornejo*, 504 F.3d at 855 n.3.

11 Thus, to proceed plaintiff must file an amended complaint, identifying a federal
12 constitutional or other federal right of which he has been deprived by the state court's order
13 deferring appointment of counsel in plaintiff's § 1405 proceeding.

14 Any amended complaint must adhere to the following requirements:

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

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

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

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

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

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

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

10 Accordingly, the court hereby orders that:

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

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

15 3. The complaint is dismissed with leave to amend within 30 days. The amended
16 complaint must bear the docket number assigned to this case and be titled "First Amended
17 Complaint." Failure to comply with this order will result in this action being dismissed. If
18 plaintiff files an amended complaint stating a cognizable claim the court will proceed with
19 service of process by the United States Marshal.

20 Dated: November 17, 2010.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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