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

DAVID W. FRAIRE,

Plaintiff,

No. CIV S-10-2469 EFB P

vs.

SOLANO COUNTY JAIL DETENTION  
FACILITY, et al.,

Defendants.

ORDER

Plaintiff is a county prisoner proceeding without counsel in an action brought 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 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff's consent. 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. 2. 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 A district court must construe a pro se pleading “liberally” to determine if it states a  
9 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an  
10 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While  
11 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of  
12 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.  
13 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff  
14 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
15 plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

16 A claim has facial plausibility when the plaintiff pleads factual content that allows  
17 the court to draw the reasonable inference that the defendant is liable for the  
18 misconduct alleged. The plausibility standard is not akin to a “probability  
19 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.

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

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

24 Every person who, under color of [state law] . . . subjects, or causes to be  
25 subjected, any citizen of the United States . . . to the deprivation of any rights,  
26 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 . . . .

1 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts  
2 establish the defendant's personal involvement in the constitutional deprivation or a causal  
3 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.  
4 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44  
5 (9th Cir. 1978)

6 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds it  
7 does not state a cognizable claim. Plaintiff alleges the following:

8 (It is noted and logged that I David W. Fraire have a keep away from Southern  
9 Hispanic Inmates.) On 8-21-2010 a facility breach of security was committed by  
10 deputy sheriff Gilligan and Redoble while they were working the control tower (4  
11 Max I) they popped my cell door open during Southern-Hispanic dayroom  
12 recreation time causing/staging a gladiator episode (combat) during this coarse  
13 [sic] they placed me in imminent danger of serious physical injury. This incodent  
14 [sic] occured [sic] in B-module, max security 4th floor. Do [sic] to being forced  
15 by staff to defend myself I was handcuffed and placed in [] (the hole) with a total  
16 los[s] of all priviledges [sic] - no T.V. - no phone, no commisary [sic], no visits,  
no razors to shave - for up to 30 days. Lt. Marsh is facility commander. My  
grievance was routed to Sgt. Cameron. Sgt. Orgensen is the [] officer who  
responded to my grievance stating that my behavior will not be tolerated. Deputy  
Martinez brought me back my griev[ance] and stated that my grievance is  
ungrievable. Deputy Sheriff Pereda classified me to punishment[,] los[s] of all  
priviledges [sic] - 10 to 30 days. . . . (cruel and unusual punishment and the right  
to grieve the government).

17 Compl. § IV. To the extent plaintiff wishes to state a claim for violation of his Eighth  
18 Amendment rights, the court notes that the Eighth Amendment protects prisoners from inhumane  
19 methods of punishment and from inhumane conditions of confinement. *Morgan v. Morgensen*,  
20 465 F.3d 1041, 1045 (9th Cir. 2006). Extreme deprivations are required to make out a  
21 conditions of confinement claim, and only those deprivations denying the minimal civilized  
22 measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment  
23 violation. *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). In order to state a claim for violation of  
24 the Eighth Amendment, the plaintiff must allege facts sufficient to support a claim that prison  
25 officials knew of and disregarded a substantial risk of serious harm to the plaintiff. *E.g., Farmer*  
26 *v. Brennan*, 511 U.S. 825, 847 (1994); *Frost v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998).

1 Plaintiff's allegations fail under these standards, as plaintiff claims only that defendants  
2 Gilligan and Redoble opened plaintiff's cell door during Southern Hispanic dayroom recreation  
3 time. While plaintiff concludes that the purpose of opening his cell door was to stage a  
4 "gladiator episode," his mere allegation that he had a "keep away" order from Southern  
5 Hispanics is not sufficient to state a plausible claim that Gilligan and Redoble opened his cell  
6 door for the purpose of staging a fight. *Iqbal*, 129 S. Ct. at 1949-50.

7 Additionally, it appears that plaintiff attempts to impose liability against the remaining  
8 defendants based on their handling of plaintiff's administrative appeals. However, there are no  
9 constitutional requirements regarding how a grievance system is operated. *See Ramirez v.*  
10 *Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (holding that prisoner's claimed loss of a liberty  
11 interest in the processing of his appeals does not violate due process because prisoners lack a  
12 separate constitutional entitlement to a specific prison grievance system). The alleged failings of  
13 defendants with respect to plaintiff's inmate appeals cannot support a claim for relief for  
14 violation of a constitutional right.

15 Thus, to proceed plaintiff must file an amended complaint. Any amended complaint  
16 must adhere to the following requirements:

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

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

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

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

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

1 these instructions.

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

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

11 Accordingly, the court hereby orders that:

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

13 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in  
14 accordance with the notice to the Solano County Sheriff's Office 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 for  
18 failure to state a claim. If plaintiff files an amended complaint stating a cognizable claim the  
19 court will proceed with service of process by the United States Marshal.

20 Dated: February 10, 2011.

21   
22 EDMUND F. BRENNAN  
23 UNITED STATES MAGISTRATE JUDGE  
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