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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 JUSTIN NEAL CUCHINE,

12 Plaintiff,

13 v.

14 ARAMARK, et al.,

15 Defendants.
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No. 2:14-cv-568-EFB P

ORDER GRANTING IFP, SEVERING
PLAINTIFFS, AND DISMISSING
COMPLAINT WITH LEAVE TO AMEND

17 Pending before the court is plaintiff Justin Neal Cuchine's civil rights complaint,
18 purportedly brought along with two other plaintiffs, all of whom are incarcerated at the Solano
19 County Sentenced Detention Facility.¹ In addition to filing a complaint, plaintiff Cuchine has
20 filed an application to proceed in forma pauperis. Federal courts must engage in a preliminary
21 screening of cases in which prisoners seek redress from a governmental entity or officer or
22 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable
23 claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous,
24 malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief
25 from a defendant who is immune from such relief." *Id.* § 1915A(b).
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27 ¹ This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C.
28 § 636(b)(1) and is before the undersigned pursuant to plaintiff Cuchine's consent. *See* E.D. Cal.
Local Rules, Appx. A, at (k)(4).

1 **I. Action Construed as Individual Suit Brought by Sole Plaintiff, Justin Cuchine**

2 Along with plaintiff, two other inmates have signed the complaint. The two other inmates
3 who have signed the complaint may not be joined in this action, and instead, must proceed with
4 their own separate lawsuits. Generally, “Rule 20(a) of the Federal Rules of Civil Procedure
5 permits the joinder of plaintiffs in one action if: (1) the plaintiffs assert any right to relief arising
6 out of the same transaction, occurrence, or series of transactions or occurrences; and (2) there are
7 common questions of law or fact. If the test for permissive joinder is not satisfied, a court, in its
8 discretion, may sever the misjoined parties, so long as no substantial right will be prejudiced by
9 the severance.” *Coughlin v. Rogers*, 130 F.3d 1348, 1350 (9th Cir. 1997) (internal citations
10 omitted); *see* Fed. R. Civ. P. 21 (“Misjoinder of parties is not a ground for dismissing an action.
11 On motion or on its own, the court may at any time, on just terms, add or drop a party. The court
12 may also sever any claim against a party.”).

13 However, actions brought by multiple prisoners in pro se present unique problems not
14 presented by ordinary civil litigation. For example, transfer of one or more plaintiffs to different
15 institutions or release on parole, as well as the challenges to communication among plaintiffs
16 presented by confinement, may cause delay and confusion. In addition, the interplay of the filing
17 fee provisions in the Prison Litigation Reform Act of 1995 (“PLRA”) suggests that prisoners may
18 not bring multi-plaintiff actions, but rather must each proceed separately.

19 To proceed with a civil action, each plaintiff must pay the \$400 filing fee required by 28
20 U.S.C. § 1914(a) or request leave to proceed in forma pauperis and submit the affidavit and trust
21 account statement required by 28 U.S.C. § 1915(a). The PLRA expressly requires that a prisoner,
22 where proceeding in forma pauperis, pay the full amount of the filing fee. 28 U.S.C. § 1915(b)(1).
23 This provision reflected Congress’s intent to reduce the volume of frivolous prisoner litigation in
24 the federal courts. *Hubbard v. Haley*, 262 F.3d 1194, 1196-97 (11th Cir. 2001); 141 Cong. Rec.
25 S7526 (daily ed. May 25, 1995) (statement of Sen. Jon Kyl) (“Section 2 will require prisoners to
26 pay a very small share of the large burden they place on the federal judicial system by paying a
27 small filing fee on commencement of lawsuits. In doing so, the provision will deter frivolous
28 inmate lawsuits. The modest monetary outlay will force prisoners to think twice about the case

1 and not just file reflexively.”); *see also Oliver v. Keller*, 289 F.3d 623, 627-28 (9th Cir. 2002). In
2 order not to undermine the PLRA’s deterrent purpose, courts have agreed that prisoner-plaintiffs
3 who proceed together in one action must each pay the full filing fee. *E.g., Boriboune v. Berge*,
4 391 F.3d 852, 855-56 (7th Cir. 2004); *Hubbard*, 262 F.3d at 1197-98. However, 28 U.S.C.
5 § 1915(b)(3) provides that “in no event shall the filing fee collected exceed the amount of fees
6 permitted by statute for the commencement of a civil action.” If multiple prisoners were
7 permitted to proceed with a joint action, and each paid the full filing fee in accordance with
8 § 1915(b)(1) and the apparent intent of Congress, the amount of fees collected would exceed the
9 amount permitted by statute for commencement of the action, in violation of § 1915(b)(3).

10 To avoid the problems related to case-management and filing fees, permissive joinder of
11 the other two inmates as plaintiffs in this action is denied. With the exception of plaintiff Justin
12 Cuchine, all other plaintiffs are dropped from this action, but they may proceed with their claims
13 in a new action. *See DirecTV, Inc. v. Leto*, 467 F.3d 842, 846 (3d Cir. 2006) (claims that are
14 severed rather than dismissed may continue in a separate suit to avoid statute of limitations barrier
15 that might arise in event of dismissal).

16 **II. Request to Proceed In Forma Pauperis**

17 Plaintiff Justin Cuchine has requested leave to proceed in forma pauperis pursuant to 28
18 U.S.C. § 1915. Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and
19 (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to
20 collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.
21 § 1915(b)(1) and (2).

22 **III. Section 1915A Screening Standards**

23 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
24 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
25 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
26 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
27 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

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1 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
2 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 129 S.
3 Ct. 1937, 1949 (2009).

4 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
5 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
6 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
7 a cause of action, supported by mere conclusory statements do not suffice.” *Ashcroft v. Iqbal*,
8 129 S. Ct. at 1949.

9 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
10 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable for the
12 misconduct alleged.” *Iqbal*, 129 S. Ct. at 1949. When considering whether a complaint states a
13 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
14 *Pardus*, 127 S. Ct. 2197, 2200 (2007), and construe the complaint in the light most favorable to
15 the plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

16 **IV. Screening Order**

17 The court has reviewed plaintiff’s complaint pursuant to § 1915A and concludes that it must
18 be dismissed with leave to amend for failure to state a claim upon which relief may be granted.
19 The complaint’s “Statement of Claim” reads as follows:

20 Aramark has a monopoly by serving one daily meals and also selling our canteen.
21 Aramark serves inadequate portions of food labeled “not for human consumption.”
22 Solano County Sheriff Department Custody Division forwards grievances to
Aramark and our complaints get denied routinely. Inmates are denied menus.

23 ECF No. 1, § IV. The request for relief seeks “better food, larger portions, cheaper canteen prices
24 or a new vendor, better living conditions.” *Id.*, § V. The complaint does not identify any claims
25 for relief and the allegations themselves fail to hint at any constitutional violation pursuant to 42
26 U.S.C. § 1983. In short, plaintiff’s allegations are simply too vague and conclusory to state a
27 claim for relief. If plaintiff Cuchine wishes to proceed with this action as an individual suit, he

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1 must file an amended complaint that links specific acts or omissions by specific defendants to a
2 deprivation of his rights only.

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
4 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
5 alleged violation was committed by a person acting under the color of state law. *West v. Atkins*,
6 487 U.S. 42, 48 (1988). An individual defendant is not liable on a civil rights claim unless the
7 facts establish the defendant's personal involvement in the constitutional deprivation or a causal
8 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.
9 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
10 (9th Cir. 1978). Plaintiff may not sue any official on the theory that the official is liable for the
11 unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948
12 (2009). Because respondeat superior liability is inapplicable to § 1983 suits, "a plaintiff must
13 plead that each Government-official defendant, through the official's own individual actions, has
14 violated the Constitution." *Id.*

15 The Eighth Amendment protects prisoners from inhumane methods of punishment and
16 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
17 2006). To show a violation of the Eighth Amendment, plaintiff must allege facts sufficient to
18 support a claim that prison officials knew of and disregarded a substantial risk of serious harm to
19 the plaintiff. *E.g., Farmer v. Brennan*, 511 U.S. 825, 847 (1994); *Frost v. Agnos*, 152 F.3d 1124,
20 1128 (9th Cir. 1998). Extreme deprivations are required to make out a conditions of confinement
21 claim, and only those deprivations denying the minimal civilized measure of life's necessities are
22 sufficiently grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*,
23 503 U.S. 1, 9 (1992). With regard to food, the Eighth Amendment is not implicated if prison
24 food fails to be "tasty or aesthetically pleasing," but only if inadequate "to maintain normal
25 health." *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993).

26 Plaintiff will be granted leave to file an amended complaint, if plaintiff can allege a
27 cognizable legal theory against a proper defendant and sufficient facts in support of that
28 cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)

1 (district courts must afford pro se litigants an opportunity to amend to correct any deficiency in
2 their complaints). Should plaintiff choose to file an amended complaint, the amended complaint
3 shall clearly set forth the claims and allegations against each defendant. Any amended complaint
4 must cure the deficiencies identified above and also adhere to the following requirements.

5 Any amended complaint must identify as a defendant only persons who personally
6 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
7 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
8 constitutional right if he does an act, participates in another's act or omits to perform an act he is
9 legally required to do that causes the alleged deprivation). It must also contain a caption
10 including the names of all defendants. Fed. R. Civ. P. 10(a).

11 Any amended complaint must be written or typed so that it so that it is complete in itself
12 without reference to any earlier filed complaint. L.R. 220. This is because an amended
13 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
14 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
15 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
16 being treated thereafter as non-existent.”) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
17 1967)).

18 Finally, the court cautions plaintiff that failure to comply with the Federal Rules of Civil
19 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
20 *See* Local Rule 110.

21 V. Summary of Order

22 Accordingly, IT IS HEREBY ORDERED that:

23 1. Permissive joinder of the named plaintiffs in this action is denied. With the exception of
24 Justin Cuchine, all other plaintiffs – Kaven Harris and Byford Boyd – are dropped from this
25 action without prejudice to proceeding with their claims in a new action.

26 2. Plaintiff Cuchine's request to proceed in forma pauperis (ECF No. 2) is granted.

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

4 4. The complaint is dismissed with leave to amend within 30 days. The amended
5 complaint must bear the docket number assigned to this case and be titled "First Amended
6 Complaint." Failure to comply with this order will result in dismissal of this action for failure to
7 state a claim. If plaintiff files an amended complaint stating a cognizable claim the court will
8 proceed with service of process by the United States Marshal.

9 Dated: April 2, 2015.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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