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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JEFFREY COLE,

Plaintiff,

v.

KNIPP, Warden, et al.,

Defendants.

No. 2:14-cv-1898-EFB P

ORDER GRANTING IFP AND DISMISSING
COMPLAINT WITH LEAVE TO AMEND
PURSUANT TO 28 U.S.C. § 1915A

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983.¹ In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. He has also filed no fewer than fourteen requests to amend or otherwise supplement his complaint and seven requests for appointment of counsel. His numerous requests are accompanied by hundreds of miscellaneous exhibits and attachments.

I. Request to Proceed In Forma Pauperis

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 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).

1 **II. Requirement and Standards**

2 Federal courts must engage in a preliminary screening of cases in which prisoners seek
3 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
5 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
6 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
7 relief.” *Id.* § 1915A(b).

8 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
9 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
10 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
11 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
12 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
13 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
14 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
15 U.S. 662, 679 (2009).

16 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
17 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
18 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
19 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
20 678.

21 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
22 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
23 content that allows the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
25 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
26 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
27 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

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1 **III. Screening Order**

2 It appears from plaintiff's excessive filings that he wishes to amend or add to his
3 complaint in a piecemeal fashion through separate filings. This, however, is not the proper
4 procedure for amending a complaint.² Plaintiff may not amend his complaint in a piecemeal
5 fashion by filing separate documents that are intended to be read together as a single complaint.
6 If plaintiff wishes to add, omit, or correct information in the operative complaint, he must file an
7 amended complaint that is complete within itself. This is because an amended complaint
8 supersedes any earlier filed complaint, and once an amended complaint is filed, the earlier filed
9 complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114 F.3d 1467,
10 1474 (9th Cir. 1997) (the "'amended complaint supersedes the original, the latter being treated
11 thereafter as non-existent.'" (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967))). Plaintiff's
12 complaint (and the intended amendments thereto) is therefore dismissed with leave to amend in
13 accordance with the requirements set forth in this order.

14 When a plaintiff is allowed to amend his complaint, he must write or type the amended
15 complaint so that it is complete in itself without reference to any earlier filed complaint. L.R.
16 220. That is, plaintiff must file a single amended complaint that includes all information relevant
17 to his claim(s).

18 Any amended complaint shall clearly set forth the claims and allegations against each
19 defendant, and must identify as a defendant only persons who personally participated in a
20 substantial way in depriving plaintiff of a federal constitutional right. *Johnson v. Duffy*, 588 F.2d
21 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if
22 he does an act, participates in another's act or omits to perform an act he is legally required to do
23 that causes the alleged deprivation). Any amended complaint must also contain a caption
24 including the names of all defendants. Fed. R. Civ. P. 10(a).

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27 ² In addition, plaintiff is hereby informed that the court is not a repository for his evidence
28 and he shall not file documentary evidence in support of his claims unless it is necessary for the
resolution of a motion.

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
2 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
3 alleged violation was committed by a person acting under the color of state law. *West v. Atkins*,
4 487 U.S. 42, 48 (1988). An individual defendant is not liable on a civil rights claim unless the
5 facts establish the defendant's personal involvement in the constitutional deprivation or a causal
6 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.
7 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
8 (9th Cir. 1978).

9 Plaintiff is cautioned that he not join unrelated claims against different defendants in a
10 single complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). The controlling principle
11 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as
12 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple
13 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
14 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in
15 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
16 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
17 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without
18 prepayment of the required fees. 28 U.S.C. § 1915(g)." *George v. Smith*, 507 F.3d 605, 607 (7th
19 Cir. 2007).

20 Although plaintiff's allegations are held to "less stringent standards than formal pleadings
21 drafted by lawyers," *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam), plaintiff is
22 required to comply with the Federal Rules of Civil Procedure and the Local Rules of the Eastern
23 District of California. *See McNeil v. United States*, 508 U.S. 106, 113 (1993) (procedural
24 requirements apply to all litigants, including prisoners lacking access to counsel); L.R. 183(a)
25 ("Any individual representing himself or herself without an attorney is bound by the Federal
26 Rules of Civil or Criminal Procedure, these Rules, and all other applicable law.").

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1 **IV. Requests for Appointment of Counsel**

2 Plaintiff requests that the court appoint counsel. District courts lack authority to require
3 counsel to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist.*
4 *Court*, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney
5 to voluntarily to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935
6 F.2d 1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
7 When determining whether “exceptional circumstances” exist, the court must consider the
8 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro
9 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965, 970
10 (9th Cir. 2009). Having considered those factors, the court finds there are no exceptional
11 circumstances in this case.

12 **V. Summary of Order**

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Plaintiff’s request to proceed in forma pauperis (ECF Nos. 6, 8) is granted.
15 Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance
16 with the notice to the Director of the California Department of Corrections and Rehabilitation
17 filed concurrently herewith.

18 2. The complaint (and the intended amendments thereto, *see* ECF Nos. 1, 4, 5, 7, 9,
19 10, 11, 16, 17, 19, 20, 24, 25, 26, 30, 31, 32, 33, 34, 35), is dismissed with leave to amend within
20 30 days. The amended complaint must bear the docket number assigned to this case and be titled
21 “First Amended Complaint.” Failure to comply with this order may result in this action being
22 dismissed for failure to prosecute. If plaintiff files an amended complaint stating a cognizable
23 claim the court will proceed with service of process by the United States Marshal.

24 3. Plaintiff’s requests for appointment of counsel (ECF Nos. 12, 18, 21, 22, 27, and
25 28) are denied.

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4. The Clerk of the Court shall terminate all outstanding motions.

Dated: March 9, 2015.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE