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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID W. WILSON,
Plaintiff,
v.
ROBERT W. FOX, et al.,
Defendants.

No. 2:15-cv-2108 MCE DB P

ORDER

Plaintiff David W. Wilson is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Previously, this action was dismissed after it was determined that plaintiff is not entitled to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(g), and the imminent danger exception does not apply. (ECF Nos. 7, 11.) The Ninth Circuit Court of Appeals reversed the dismissal order on the ground that plaintiff adequately alleged imminent danger of serious physical injury. (ECF No. 15.) Accordingly, plaintiff’s pending motion to proceed in forma pauperis will be granted. Plaintiff’s complaint is now before the court for screening.

I. Screening Requirement

The in forma pauperis statute provides, “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

1 **II. Pleading Standard**

2 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
3 immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp.
4 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983 is not itself a source of
5 substantive rights, but merely provides a method for vindicating federal rights conferred
6 elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

7 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a
8 right secured by the Constitution or laws of the United States was violated and (2) that the alleged
9 violation was committed by a person acting under the color of state law. See West v. Atkins, 487
10 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

11 A complaint must contain “a short and plain statement of the claim showing that the
12 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
13 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
14 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
15 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual
16 matter, accepted as true, to state a claim to relief that is plausible on its face.” Id. Facial
17 plausibility demands more than the mere possibility that a defendant committed misconduct and,
18 while factual allegations are accepted as true, legal conclusions are not. Id. at 677-78.

19 **III. Plaintiff’s Allegations**

20 At all times relevant to this action, plaintiff was a state inmate housed at California
21 Medical Facility (“CMF”) in Vacaville, California. He names as defendants CMF Warden Robert
22 Fox; Lt. E. Corr; Sergeants Carpe, T. Richardson, G. Warden, Thomas, Blueford, and Jenkins;
23 Counselors J. Tennant and Vaden; Assistant Food Manager C. Walker; Supervising Cooks Sam
24 Garcia, McMasters, Lam Dang, and J. Terrell; Cooks Coffey, Pabalao, Fessler, Tate, G.
25 Huntawarden, Bundy, Burgess, Tan, S. Sylvester, J.R. McCllum, and Heinz; Personal Officer T.
26 Martinez-Long; Dietician Tiffany Peralta; Correctional Officer G. Brown; Appeals Examiner D.
27 Artis; Chief of Appeals J.D. Lozano, J.A. Zamora, R.L. Briggs, M. Voong; Psychologist Dr.
28 Valassopoulos; and Psychiatrist C. Kaw.

1 Plaintiff's complaint is long, rambling, and difficult to decipher. As best as the court can
2 determine, plaintiff asserts a number of unrelated claims spanning a 16-month period. Some of
3 these claims include (1) a violation of his equal protection rights based on the intervals between
4 inmates' release from their cells for toilet use and access to institutional programs; (2) an Eighth
5 Amendment conditions of confinement claim based on defendants' failure to implement cooling
6 measures for excessive heat in the summer season; (3) a conditions of confinement claim based
7 on the use of cage showers and the existence of mold in those showers; (4) limitations on yard
8 access activities; (5) "prior appeal equal access, for [California Medical Facility] has not done
9 program evaluations and receives federal funds for School/Yard"; (6) Sgt. Warren improperly
10 denied plaintiff's lunch yard access; (7) a conditions of confinement claim based on the
11 defendants' use of fans in the chow halls during the winter months to rush them out and also
12 based on the chow hall workers' various hygiene violations; and (8) injunctive relief for a medical
13 chrono limiting his exposure to the dayroom, which plaintiff contends is stressful for him.

14 Plaintiff seeks injunctive relief and damages.

15 **IV. Discussion**

16 Plaintiff's assertion of a number of unrelated claims against 36 defendants violates
17 Federal Rule of Civil Procedure 20(a)(2), which permits a plaintiff to sue multiple defendants in
18 the same action only if "any right to relief is asserted against them jointly, severally, or in the
19 alternative with respect to or arising out of the same transaction, occurrence, or series of
20 transactions or occurrences," and there is a "question of law or fact common to all defendants."
21 "Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should not
22 be joined with unrelated Claim B against Defendant 2. Unrelated claims against different
23 defendants belong in different suits ..." George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (citing
24 28 U.S.C. § 1915(g)). Since plaintiff's claims do not appear to arise out of the same transaction or
25 involve common questions of law or fact, the complaint will be dismissed with leave to amend.

26 If plaintiff elects to amend his complaint, plaintiff shall choose which claims he wishes to
27 pursue in this action. If plaintiff does not do so and his amended complaint again sets forth

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1 unrelated claims that violate joinder rules, the court may recommend dismissal of this action for
2 failure to comply with court orders.

3 **V. Conclusion**

4 Plaintiff's complaint contains unrelated claims against different defendants in violation of
5 Federal Rule of Civil Procedure 20(a)(2). The court will grant plaintiff an opportunity to file an
6 amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is again
7 advised that, if he chooses to amend, he may only allege claims that (a) arise out of the same
8 transaction, occurrence, or series of transactions or occurrences, and (b) present questions of law
9 or fact common to all defendants named therein. Fed. R. Civ. P. 20(a)(2). Plaintiff must file
10 individual actions for unrelated claims against unrelated defendants.

11 If plaintiff opts to amend, he must demonstrate that the alleged acts resulted in a
12 deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff must set forth
13 "sufficient factual matter . . . to 'state a claim that is plausible on its face.'" Id. at 678 (quoting
14 Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate that each named defendant
15 personally participated in a deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th
16 Cir. 2002).

17 Plaintiff should note that although he has been given the opportunity to amend, it is not for
18 the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). Plaintiff
19 should carefully read this Screening Order and focus his efforts on curing the deficiencies set
20 forth above.

21 Finally, plaintiff is advised that Local Rule 220 requires that an amended complaint be
22 complete in itself without reference to any prior pleading. As a general rule, an amended
23 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).
24 Once an amended complaint is filed, the original complaint no longer serves any function in the
25 case. Therefore, in an amended complaint, as in an original complaint, each claim and the
26 involvement of each defendant must be sufficiently alleged. The amended complaint should be
27 clearly and boldly titled "First Amended Complaint," refer to the appropriate case number, and be
28 an original signed under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R.

1 Civ. P. 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a
2 right to relief above the speculative level” Twombly, 550 U.S. at 555 (citations omitted).

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.

5 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
6 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §
7 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the
8 Director of the California Department of Corrections and Rehabilitation filed concurrently
9 herewith.

10 3. Plaintiff’s complaint is dismissed.

11 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
12 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
13 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
14 assigned this case and must be labeled “Amended Complaint”; plaintiff must file an original and
15 two copies of the amended complaint; failure to file an amended complaint in accordance with
16 this order will result in a recommendation that this action be dismissed.

17 Dated: June 7, 2017

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21 DEBORAH BARNES
22 UNITED STATES MAGISTRATE JUDGE

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