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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 DONNY STEWARD,

12 Plaintiff,

13 v.

14 G. THUMSER, et al.,

15 Defendants.  
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No. 2:16-cv-1232 TLN KJN P

ORDER

17 Plaintiff is a state prisoner, proceeding pro se. This action proceeds on plaintiff's claims  
18 that on December 12, 2013, defendants Olson, Harrison, Pompey, Tapiz, and Jones used  
19 excessive force and failed to protect plaintiff when an allegedly excessive amount of pepper spray  
20 was used on plaintiff while he was engaged in a fight with another inmate, and allegedly used hot  
21 water to decontaminate plaintiff thereafter. (ECF No. 15.)

22 Motion to Compel

23 On August 14, 2018, the undersigned partially granted plaintiff's motion to propound  
24 additional interrogatories. On August 21, 2018, plaintiff signed a motion to compel in which he  
25 seeks a court order requiring defendants to respond to all of the additional interrogatories.  
26 Defendants oppose plaintiff's motion, arguing that it is premature, moot and unintelligible.

27 Defendants' position is well-taken. Plaintiff's motion to propound additional  
28 interrogatories was only partially granted, and defendants were granted thirty days in which to

1 respond to interrogatories 26, 35 through 38, and 42. Thus, plaintiff's motion to compel was  
2 prematurely filed and is denied.

3 Motion to Amend

4 In addition, on September 4, 2018, plaintiff filed a document entitled "Notice of Motion to  
5 Amend and Addendum." (ECF No. 62.) In this motion, plaintiff also discusses his motion for  
6 leave to propound interrogatories. However, as stated above, the court ruled on plaintiff's motion  
7 on August 14, 2018. It is unclear whether plaintiff is attempting to revisit the discovery issues  
8 resolved by the August 14, 2018 order, or whether plaintiff is attempting to explain why he needs  
9 to amend his pleading. Plaintiff does ask the court to grant plaintiff an additional 45 days in  
10 which "to submit a new line of interrogatories in preparation for pretrial and raise the general  
11 public awareness of the kind of sadistic malicious and brute excessive force [that plaintiff] and  
12 thousands of inmates suffer in the CDCR system and what's being done about the problem of the  
13 inefficient and extremely dangerous use of O.C. MK-9 pepper spray." (ECF No. 62 at 13.)  
14 Plaintiff then reiterates the facts of his underlying action, and appears to appeal to the court to add  
15 additional parties as defendants, as well as new claims.

16 First, plaintiff has failed to show good cause why he should be granted leave to propound  
17 additional interrogatories, particularly where he already propounded 25 interrogatories, and was  
18 granted leave to propound six more. Plaintiff's request is denied.

19 Second, plaintiff has failed to provide a separate proposed third amended complaint that  
20 clearly sets forth the named defendants and the proposed causes of action. An amended pleading  
21 must make clear who plaintiff is naming as a defendant, and what plaintiff claims each defendant  
22 did that allegedly violated his constitutional rights. The proposed amended pleading must be  
23 separate from plaintiff's motion to amend. Fed. R. Civ. P. 15; 28 U.S.C. § 1915.

24 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
25 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any  
26 heightened pleading standard in cases other than those governed by Rule 9(b)."); Fed. R. Civ. P.  
27 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be  
28 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema

1 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,  
2 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8. Plaintiff must  
3 eliminate from plaintiff’s pleading all preambles, introductions, argument, speeches,  
4 explanations, stories, griping, vouching, evidence, attempts to negate possible defenses,  
5 summaries, and the like. McHenry v. Renne, 84 F.3d 1172, 1180 (9th Cir. 1996) (affirming  
6 dismissal of § 1983 complaint for violation of Rule 8 after warning); see Crawford-El v. Britton,  
7 523 U.S. 574, 597 (1998) (reiterating that “firm application of the Federal Rules of Civil  
8 Procedure is fully warranted” in prisoner cases). Plaintiff should not include explanations or  
9 information concerning interrogatories; rather, he must briefly set forth the facts supporting each  
10 cause of action. The court (and defendant) should be able to read and understand plaintiff’s  
11 pleading within minutes. McHenry, 84 F.3d at 1177. A long, rambling pleading, including many  
12 defendants with unexplained, tenuous or implausible connection to the alleged constitutional  
13 injury or joining a series of unrelated claims against many defendants very likely will result in  
14 delaying the review required by 28 U.S.C. § 1915 and an order dismissing plaintiff’s action  
15 pursuant to Fed. R. Civ. P. 41 for violation of these instructions.

16 Third, this action was filed in 2016, and plaintiff has already amended his pleading on  
17 several occasions. Absent facts not present here, the court is not inclined to allow plaintiff to  
18 amend again. Thus, to avoid further delay, plaintiff’s proposed third amended complaint must be  
19 accompanied by a motion to amend that shows good cause why he needs to amend his pleading  
20 again, and at such a late date. If plaintiff chooses to again seek leave to amend, he must file his  
21 motion to amend, along with his proposed amended pleading, within thirty days from the date of  
22 this order.

23 Fourth, plaintiff may only add claims or defendants properly joined under Federal Rule of  
24 Civil Procedure 20(a) concerning joinder of claims and defendants. A plaintiff may properly  
25 assert multiple claims against a single defendant. Fed. Rule Civ. P. 18. In addition, a plaintiff  
26 may join multiple defendants in one action where “any right to relief is asserted against them  
27 jointly, severally, or in the alternative with respect to or arising out of the same transaction,  
28 occurrence, or series of transactions and occurrences” and “any question of law or fact common

1 to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). Unrelated claims against  
2 different defendants must be pursued in separate lawsuits. See George v. Smith, 507 F.3d 605,  
3 607 (7th Cir. 2007). This rule is intended “not only to prevent the sort of morass [a multiple  
4 claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing  
5 fees -- for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals  
6 that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g).”  
7 George, 507 F.3d at 607.

8 Here, this action proceeds on plaintiff’s claims that defendants used excessive force and  
9 failed to protect plaintiff on December 12, 2013. Unless plaintiff can demonstrate that his  
10 proposed new claims or new defendants are properly related to the December 12, 2013 incident,  
11 plaintiff must pursue his proposed new claims or new defendants in a separate action. Plaintiff is  
12 not granted leave to add new claims or defendants unrelated to the December 12, 2013 incident.

13 Fourth, plaintiff asks the court to allow him to charge inmate Nunez with assault and  
14 battery with the intent to cause great bodily harm under California Penal Code § 245. However,  
15 criminal statutes do not give rise to civil liability. Allen v. Gold Country Casino, 464 F.3d 1044,  
16 1048 (9th Cir. 2006). Thus, plaintiff’s request is denied.

17 For all the above reasons, plaintiff’s motion to amend is denied without prejudice.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff’s motion to compel (ECF No. 61) is denied;
- 20 2. Plaintiff’s request to propound additional interrogatories (ECF No. 62) is denied; and
- 21 3. Plaintiff’s motion (ECF No. 62) is denied without prejudice. If plaintiff chooses to  
22 again seek leave to amend, plaintiff must file his motion to amend, accompanied by his proposed  
23 amended pleading, within thirty days from the date of this order. Any proposed third amended  
24 complaint must be filed on the court’s form, and may not exceed 15 pages. Plaintiff’s proposed  
25 third amended complaint shall comply with the requirements of the Civil Rights Act, the Federal

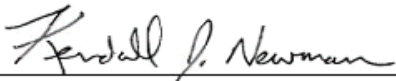
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1 Rules of Civil Procedure, and the Local Rules of Practice. The proposed third amended  
2 complaint must also bear the docket number assigned to this case and must be labeled "Proposed  
3 Third Amended Complaint."

4 Dated: September 13, 2018

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6 KENDALL J. NEWMAN  
7 UNITED STATES MAGISTRATE JUDGE

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