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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON STRIBLING,  
Plaintiff,  
v.  
COSTA, et al.,  
Defendants.

No. 2:17-cv-1243 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

**I. Application to Proceed In Forma Pauperis**

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff’s trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month’s income credited to plaintiff’s prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
2 1915(b)(2).

## 3 **II. Screening Requirement**

4 The in forma pauperis statute provides, "Notwithstanding any filing fee, or any portion  
5 thereof, that may have been paid, the court shall dismiss the case at any time if the court  
6 determines that ... the action or appeal ... fails to state a claim upon which relief may be granted."  
7 28 U.S.C. § 1915(e)(2)(B)(ii).

## 8 **III. Pleading Standard**

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

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

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

## 26 **IV. Plaintiff's Allegations**

27 Plaintiff's claims arose while he was housed at California State Prison in Sacramento,  
28 California ("CSP-Sac"). He brings suit against two social workers, Costa and Schmitt.

1 As best as the court can determine, plaintiff's allegations, which are handwritten in very  
2 small script, are summarized as follows:

3 In April 2015, plaintiff was dissatisfied with defendant social worker Costa being assigned  
4 as his clinician for mental health care. Accordingly, plaintiff submitted an inmate grievance  
5 requesting a new clinician. When plaintiff did not receive a response to this grievance, he  
6 submitted another grievance. In the meantime, his mental health took a turn for the worse, and he  
7 was placed on suicide watch in May. On June 30, 2015, plaintiff informed Costa's supervisor,  
8 defendant Schmitt, of his issues.

9 Plaintiff's remaining allegations are unintelligible.

10 Plaintiff seeks damages.

## 11 **V. Analysis**

12 While it appears that plaintiff is asserting an Eighth Amendment medical indifference  
13 claim against the defendants, the court cannot be certain in light of the plaintiff's small, cramped,  
14 and ultimately indecipherable handwriting. Plaintiff's complaint must therefore be dismissed for  
15 failure to comply with Federal Rule of Civil Procedure 8(a)'s directive to provide "a short and  
16 plain statement of the claim."

17 It appears that plaintiff attempted to list the entirety of his allegations on the few lines  
18 provided to him in the form complaint, forcing him to minimize his script until it became  
19 impossible to read. Plaintiff is hereby referred to the directions following Section IV, Statement  
20 of Claim:

21 (State here as briefly as possible the facts of your case. Describe  
22 how each defendant is involved, including dates and places. Do not  
23 give any legal arguments or cite any cases or statutes. **Attach extra  
sheets if necessary.**)

24 Compl. at 4 (emphasis added). Since plaintiff will be provided leave to amend, he is advised to  
25 attach additional pages, if necessary, to properly assert his claim(s) against the defendants.

## 26 **VI. Conclusion**

27 Plaintiff's complaint must be dismissed for failure to comply with Federal Rule of Civil  
28 Procedure 8. The court will grant plaintiff an opportunity to file an amended complaint to cure

1 noted defects. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If plaintiff does not wish  
2 to amend, he may instead file a notice of voluntary dismissal, and the action then will be  
3 terminated by operation of law. Fed. R. Civ. P. 41(a)(1)(A)(i).

4 If plaintiff chooses to amend, he must demonstrate that the alleged acts resulted in a  
5 deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff must set forth  
6 “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’” Id. at 678 (quoting  
7 Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate that each named defendant  
8 personally participated in a deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th  
9 Cir. 2002). Plaintiff should note that although he has been given the opportunity to amend, it is  
10 not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).  
11 Plaintiff should carefully read this screening order and focus his efforts on curing the deficiencies  
12 set forth above.

13 Finally, plaintiff is advised that Local Rule 220 requires that an amended complaint be  
14 complete in itself without reference to any prior pleading. As a general rule, an amended  
15 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967).  
16 Once an amended complaint is filed, the original complaint no longer serves any function in the  
17 case. Therefore, in an amended complaint, as in an original complaint, each claim and the  
18 involvement of each defendant must be sufficiently alleged. The amended complaint should be  
19 clearly and boldly titled “First Amended Complaint,” refer to the appropriate case number, and be  
20 an original signed under penalty of perjury. Plaintiff’s amended complaint should be brief. Fed. R.  
21 Civ. P. 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a  
22 right to relief above the speculative level . . . .” Twombly, 550 U.S. at 555 (citations omitted).

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 3) is granted.
- 25 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action.

26 Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
27 § 1915(b)(1). All fees shall be collected and paid in accordance with this court’s order to the

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1 Director of the California Department of Corrections and Rehabilitation filed concurrently  
2 herewith.

3 3. Plaintiff's complaint is dismissed with leave to amend;

4 4. The Clerk's Office shall send plaintiff a blank civil rights complaint form and a  
5 copy of his complaint, filed June 15, 2017;

6 5. Within thirty (30) days from the date of this order, plaintiff must file either a first  
7 amended complaint curing the deficiencies identified by the court in this order, or a notice of  
8 voluntary dismissal; and

9 6. If plaintiff fails to comply with this order, the court may recommend the action be  
10 dismissed, with prejudice, for failure to obey a court order.

11 Dated: January 9, 2018

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14 DEBORAH BARNES  
15 UNITED STATES MAGISTRATE JUDGE

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