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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DALLAS JOSHUA JAMES MYERS,
Plaintiff,
v.
EDMUND BROWN, et al.,
Defendants.

No. 2:18-cv-0111-EFB P

ORDER

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has filed a complaint (ECF No. 1) and an application to proceed in forma pauperis (ECF No. 7).¹

Application to Proceed In Forma Pauperis

The court has reviewed plaintiff’s application and finds that it makes the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, plaintiff’s request to proceed in forma pauperis is granted.

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¹ This is the second IFP application in this case. The first (ECF No. 2) was filed contemporaneously with plaintiff’s complaint. It appears, based on plaintiff’s address, that the second IFP application may have been prompted by his release from prison. Thus, the court will consider only the latter. The first application is now moot.

1 that allows the court to draw the reasonable inference that the defendant is liable for the
2 misconduct alleged.” *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 556). In reviewing a complaint
3 under this standard, the court must accept as true the allegations of the complaint in question,
4 *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), as well as construe the pleading
5 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, *Jenkins v.*
6 *McKeithen*, 395 U.S. 411, 421 (1969).

7 II. Analysis

8 Plaintiff brings this action against twelve defendants and his complaint contains various,
9 unrelated claims. He alleges, *inter alia*, that: (1) in retaliation for filing a lawsuit, unnamed
10 correctional officers at Mule Creek State Prison subjected him to cell searches and confiscations
11 of food and hygiene products (ECF No. 1 at 10-11); (2) that defendant Richard Weiss, a physician
12 and plaintiff’s primary care provider, subjected him to unwanted sexual advances and interfered
13 with his medical care when he refused those advances (*id.* at 11); (3) that his rights under the
14 Americans with Disabilities Act were violated² when he was assigned to an upper bunk bed in
15 spite of his ambulatory limitations (*id.* at 8); (4) that, after plaintiff’s transfer to California State
16 Prison, Corcoran, he was not provided with psychiatric medication, his legal mail went
17 undelivered, and his conditions of confinement were unconstitutional (*id.* at 9); and (5) that
18 Governor Brown overpopulates state prisons “without providing proper [a]ccommodations to . . .
19 prisoners including the plain[t]iff.” These unrelated claims against multiple defendants violate
20 the federal rules of civil procedure. Federal Rule of Civil Procedure 20(a)(2) requires that the
21 right to relief against multiple defendants arise out of common events and contain common
22 questions of law or fact.

23 The court also notes that plaintiff’s complaint, although typed, is extremely difficult to
24 read. Many of the claims are set out in lengthy, unbroken paragraphs. *See, e.g.*, ECF No. 1 at 10-
25 11. Additionally, the type font is extremely faint and, at times, almost impossible to make out.

27 ² Plaintiff appears to bring this claim against Mule Creek State Prison itself. ECF No. 1 at
28 8. This is not a viable defendant insofar as the prison is not a “person” within the meaning of
section 1983. *See Allison v. California Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969).

1 See, e.g., *id.* at 16-17. Although he is not an attorney, plaintiff bears the responsibility of
2 ensuring that the court (and any defendants who are ultimately served) can make sense of his
3 allegations.

4 Finally, the court recognizes that plaintiff has attached to the end of his complaint a
5 “motion to leave of court to incorporate a third party plaintiff.” ECF No. 1 at 19. Therein,
6 plaintiff requests that Maurice Godoy – who is plaintiff’s “jailhouse lawyer” – be designated a
7 third-party plaintiff to this suit. *Id.* at 19. Plaintiff misunderstands third party practice under the
8 federal rules. Under those rules, after the plaintiff names a defendant as a party, that defendant
9 may as a third party plaintiff, file a third party complaint against a third party defendant who “is
10 or may be liable to [the defendant and third party plaintiff] for all or part of the claim against it.”
11 Fed. R. Civ. P. 14(a)(1). Additionally, when a claim is asserted against a plaintiff in a lawsuit,
12 “the plaintiff may bring in a third party if this rule would allow a defendant to do so.” Fed. R.
13 Civ. P. 14(b). These conditions not being met, plaintiff’s request to have Mr. Godoy designated a
14 third-party plaintiff is denied.

15 Leave to Amend

16 Plaintiff may choose to amend his complaint. He is cautioned that any amended
17 complaint must identify as a defendant only persons who personally participated in a substantial
18 way in depriving him of his constitutional rights. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.
19 1978) (a person subjects another to the deprivation of a constitutional right if he does an act,
20 participates in another’s act or omits to perform an act he is legally required to do that causes the
21 alleged deprivation). Plaintiff may also include any allegations based on state law that are so
22 closely related to his federal allegations that “they form the same case or controversy.” See 28
23 U.S.C. § 1367(a).

24 The amended complaint must also contain a caption including the names of all defendants.
25 Fed. R. Civ. P. 10(a).

26 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. See
27 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Nor, as mentioned above, may he bring
28 unrelated claims against multiple defendants. *Id.*

1 Any amended complaint must be written or typed so that it so that it is complete in itself
2 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
3 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
4 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
5 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
6 being treated thereafter as non-existent.””) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
7 1967)).

8 Any amended complaint should be as concise as possible in fulfilling the above
9 requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of procedural or factual
10 background which has no bearing on his legal claims. He should also take pains to ensure that his
11 amended complaint is as legible as possible. This refers not only to penmanship, but also spacing
12 and organization. Plaintiff should carefully consider whether each of the defendants he names
13 actually had involvement in the constitutional violations he alleges. A “scattershot” approach in
14 which plaintiff names dozens of defendants will not be looked upon favorably by the court.

15 Conclusion

16 Accordingly, it is ORDERED that:

17 1. Plaintiff’s earlier application to proceed in forma pauperis (ECF No. 2) is DENIED as
18 MOOT;

19 2. Plaintiff’s most recent application to proceed in forma pauperis (ECF No. 7) is
20 GRANTED;

21 3. Plaintiff’s request to add Maurice Godoy as a third-party defendant to this action is
22 DENIED;

23 4. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend within 30 days of
24 service of this order; and

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5. Failure to file an amended complaint within the foregoing deadline will result in a recommendation that this action be dismissed for failure to prosecute.

DATED: February 11, 2019.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE