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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH HILL, et al.,
Plaintiffs,
v.
SCOTT KERNAN, et al.,
Defendants.

No. 2:18-cv-1108 TLN CKD P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiffs, state prisoners proceeding pro se, seek relief pursuant to 42 U.S.C. § 1983 and a preliminary injunction. (ECF Nos. 1, 8.) Plaintiff Hill has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 (ECF Nos. 4, 9) and some of the plaintiffs have filed an amended complaint (ECF No. 10).

I. First Amended Complaint

As an initial matter, the court notes that this action has been filed by fifteen different plaintiffs. (ECF No. 1 at 1-2.) Some, but not all, of these plaintiffs have filed an amended complaint. (ECF No. 10 at 2.) Because the amended complaint has not been signed by all the original plaintiffs, and those plaintiffs who did not sign have not submitted notices that they are withdrawing from the case, the first amended complaint will be stricken from the record.¹

¹ The court notes that besides one new individual attempting join as a plaintiff, some
(continued)

1 II. Dismissal of Additional Plaintiffs

2 As noted above, this action was brought by multiple plaintiffs. However, it does not
3 appear that the plaintiffs are properly joined. The Federal Rules of Civil Procedure permit
4 multiple persons to join as plaintiffs in an action when “(A) they assert any right to relief jointly,
5 severally, or in the alternative with respect to or arising out of the same transaction, occurrence,
6 or series of transactions or occurrences; and (B) any question of law or fact common to all
7 plaintiffs will arise in the action.” Fed. R. Civ. P. 20(a)(1). In the complaint, plaintiffs allege that
8 they are general population inmates with serious mental health disorders and that defendants were
9 deliberately indifferent to their mental health needs when they began integrating protective
10 custody inmate-patients with the general population inmate-patients for mental health treatment.
11 ECF No. 1 at 6, 8-9. In order to provide integrated treatment, protective custody and general
12 population inmate-patients are being stripped of their single-cell status and housed together,
13 leading to increased tensions and fighting on the yard. Id. at 8-9. Those who advise officers of
14 compatibility issues with their cell mates are written up for rules violations, which subjects them
15 to disciplinary sanctions. Id. at 9.

16 Although plaintiffs are alleging that the same policy is violating their rights, determining
17 whether defendants have been deliberately indifferent to their mental health needs will require an
18 individualized consideration of the facts regarding their mental health conditions, housing
19 assignments, disciplinary actions, and any adverse effects or conditions they may have suffered.
20 Should the defendants raise the issue of exhaustion of administrative remedies, this will also
21 require an individualized examination of whether each plaintiff has complied with the exhaustion
22 requirements of 42 U.S.C. § 1997e. Because of this, joinder is not proper. See Coughlin v.
23 Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997) (“[T]he mere fact that all Plaintiffs’ claims arise
24 under the same general law does not necessarily establish a common question of law or fact.
25 Clearly, each Plaintiff’s claim is discrete, and involves different legal issues, standards, and

26 typographical corrections, and an additional third claim that does not materially change the
27 complaint, the first amended complaint is identical to the original complaint. Compare ECF No.
28 1 with ECF No. 10.

1 procedures. Indeed, even if Plaintiffs’ cases were not severed, the Court would still have to give
2 each claim individualized attention. Therefore, the claims do not involve common questions of
3 law or fact.”).

4 Even if the plaintiffs could amend the complaint to show joinder was proper, they are
5 individuals in the custody of the California Department of Corrections and Rehabilitation. In this
6 court’s experience, an action brought by multiple inmate plaintiffs proceeding pro se presents
7 procedural problems that cause delay and confusion. Delay often arises from the frequent transfer
8 of inmates to other facilities or institutions,² the changes in address that occur when inmates are
9 released to parole, and the difficulties faced by inmates who attempt to communicate with each
10 other and with un-incarcerated individuals. Even if all of the plaintiffs obtained authorization to
11 communicate with each other, delays would be caused by the need for all filings to contain the
12 original signatures of all plaintiffs, since plaintiffs are not permitted to authorize one individual to
13 sign documents for them. L.R. 131(b) (“All pleadings and non-evidentiary documents shall be
14 signed . . . by the party involved if that party is appearing *in propria persona*.”); Johns v. County
15 of San Diego, 114 F.3d 874, 877 (9th Cir. 1997) (“[A] non-lawyer ‘has no authority to appear as
16 an attorney for others than himself.’” (quoting C.E. Pope Equity Tr. v. United States, 818 F.2d
17 696, 697 (9th Cir. 1987))). Such issues have already arisen with plaintiffs’ attempt to amend the
18 complaint because it was not signed by each of them.

19 When parties are misjoined, “the court may at any time, on just terms, add or drop a party.
20 The court may also sever any claim against a party.” Fed. R. Civ. P. 21. “[D]istrict courts who
21 dismiss rather than sever must conduct a prejudice analysis, including ‘loss of otherwise timely
22 claims if new suits are blocked by statutes of limitations.’” Rush v. Sport Chalet, Inc., 779 F.3d
23 973, 975 (9th Cir. 2015) (citations omitted). In this case, the court finds dismissal of all plaintiffs
24 except plaintiff Hill to be appropriate. The complaint contains only general allegations and no
25 specifics as to how each defendant has violated each plaintiff’s rights and what each plaintiff has

26 ² At least one plaintiff has already been transferred. The docket in this case reflects that on May
27 23, 2018, plaintiff Wells filed a notice of change of address in another case stating that he is now
28 housed at Salinas Valley State Prison.

1 experienced, and therefore currently fails to state any claims for relief. If the court severs the
2 plaintiffs instead of dismissing them without prejudice, each plaintiff will be obligated to pay the
3 statutory filing fee of \$350.00 for his action, even if he proceeds in forma pauperis, 28 U.S.C.
4 § 1915(b)(1), and there is the potential for accruing a strike if they are ultimately unable to state a
5 claim for relief, 28 U.S.C. § 1915(g). Since plaintiff Hill is the only plaintiff to have submitted an
6 application to proceed in forma pauperis, it is not clear that the other plaintiffs have considered
7 these potential consequences of filing a complaint. The court finds that it would be more
8 appropriate to let each individual plaintiff choose whether to continue pursuing these claims by
9 separate lawsuit rather than making that choice for them. Furthermore, based on what little
10 information is provided, the alleged violations of their rights are both recent and ongoing,
11 allaying any concerns related to the statute of limitations. (ECF No. 1 at 8-9.)

12 Accordingly, the undersigned recommends that all plaintiffs except plaintiff Hill be
13 dismissed without prejudice to initiating their own, individual actions.³

14 III. Application to Proceed In Forma Pauperis

15 Plaintiff Hill has submitted a declaration that makes the showing required by 28 U.S.C.
16 § 1915(a). (ECF Nos. 4, 7, 9.) Accordingly, the request to proceed in forma pauperis will be
17 granted.

18 Plaintiff Hill is required to pay the statutory filing fee of \$350.00 for this action. 28
19 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff Hill will be assessed an initial partial filing
20 fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will
21 direct the appropriate agency to collect the initial partial filing fee from plaintiff Hill's trust
22 account and forward it to the Clerk of the Court. Thereafter, plaintiff Hill will be obligated for
23 monthly payments of twenty percent of the preceding month's income credited to his prison trust
24 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
25 each time the amount in his account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.

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27 ³ This includes dismissal of T'varria Coleman, who attempted to join as a plaintiff in the first
28 amended complaint.

1 § 1915(b)(2).

2 IV. Statutory Screening of Prisoner Complaints

3 The court is required to screen complaints brought by prisoners seeking relief against a
4 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
5 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
6 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]
7 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

8 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
10 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal
11 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,
12 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
13 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
14 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
15 Franklin, 745 F.2d at 1227-28 (citations omitted).

16 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
17 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
18 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
19 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
20 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
21 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
22 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations
23 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
24 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)
25 (quoting 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d
26 ed. 2004)).

27 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
28 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting

1 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
2 content that allows the court to draw the reasonable inference that the defendant is liable for the
3 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
4 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
5 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976), as well as construe the pleading in the
6 light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v.
7 McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

8 V. Complaint

9 As discussed above, the complaint contains only general allegations that the recent
10 integration of protective custody and general population inmate-patients violates the plaintiff’s
11 Eighth Amendment rights. There can be no liability under 42 U.S.C. § 1983 unless there is some
12 affirmative link or connection between a defendant’s actions and the claimed deprivation. Rizzo
13 v. Goode, 423 U.S. 362, 371, 376 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980).
14 “Vague and conclusory allegations of official participation in civil rights violations are not
15 sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).
16 Accordingly, since the complaint lacks specific allegations regarding defendants’ actions as they
17 relate to any of the plaintiffs, the complaint fails to state a claim for relief and will be dismissed.
18 Plaintiff Hill will be given leave to amend and it will be recommended that all other plaintiffs be
19 dismissed without prejudice to filing their own, individual actions.

20 VI. Leave to Amend

21 If plaintiff Hill chooses to amend the complaint, it should contain only those claims that
22 apply to him. Furthermore, he should keep in mind that “a prison official violates the Eighth
23 Amendment only when two requirements are met. First, the deprivation alleged must be,
24 objectively, sufficiently serious; a prison official’s act or omission must result in the denial of the
25 minimal civilized measure of life’s necessities.” Farmer v. Brennan, 511 U.S. 825, 834 (1994)
26 (internal quotation marks and citations omitted). Second, the prison official must subjectively
27 have a sufficiently culpable state of mind, “one of deliberate indifference to inmate health or
28 safety.” Id. (internal quotation marks and citations omitted). The official is not liable under the

1 Eighth Amendment unless he “knows of and disregards an excessive risk to inmate health or
2 safety; the official must both be aware of facts from which the inference could be drawn that a
3 substantial risk of serious harm exists, and he must also draw the inference.” Id. at 837. Then he
4 must fail to take reasonable measures to abate the substantial risk of serious harm. Id. at 847.
5 Mere negligent failure to protect an inmate from harm is not actionable under § 1983. Id. at 835.

6 He must also demonstrate how the conditions about which he complains resulted in a
7 deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the
8 complaint must allege in specific terms how each named defendant is involved. Arnold v. Int’l
9 Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42
10 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant’s actions
11 and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).
12 Furthermore, “[v]ague and conclusory allegations of official participation in civil rights violations
13 are not sufficient.” Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

14 Plaintiff Hill is also informed that the court cannot refer to a prior pleading in order to
15 make his first amended complaint complete. Local Rule 220 requires that an amended complaint
16 be complete in itself without reference to any prior pleading. This is because, as a general rule,
17 an amended complaint supersedes the original complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th
18 Cir. 1967), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 929 (9th Cir. 2012)
19 (claims dismissed with prejudice and without leave to amend do not have to be re-pled in
20 subsequent amended complaint to preserve appeal). Once plaintiff Hill files a first amended
21 complaint, the original complaint no longer serves any function in the case. Therefore, in an
22 amended complaint, as in an original complaint, each claim and the involvement of each
23 defendant must be sufficiently alleged.

24 VII. Motions for Preliminary Injunction

25 Plaintiff Hill has also filed two motions for preliminary injunction.⁴ (ECF No. 1 at 12-26;
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27 ⁴ Both motions are signed only by plaintiff Hill and are therefore brought only by him. Johns,
28 114 F.3d at 877.

1 ECF No. 8.) “A plaintiff seeking a preliminary injunction must establish [(1)] that he is likely to
2 succeed on the merits, [(2)] that he is likely to suffer irreparable harm in the absence of
3 preliminary relief, [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is
4 in the public interest.” Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (citations
5 omitted). The Ninth Circuit has held that “‘serious questions going to the merits’ and a balance
6 of hardships that tips sharply towards the plaintiff can support issuance of a preliminary
7 injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and
8 that the injunction is in the public interest,” even if the moving party cannot show that he is likely
9 to succeed on the merits. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir.
10 2011). Under either formulation of the principles, preliminary injunctive relief should be denied
11 if the probability of success on the merits is low. Johnson v. Cal. State Bd. of Accountancy, 72
12 F.3d 1427, 1430 (9th Cir. 1995) (“[E]ven if the balance of hardships tips decidedly in favor of
13 the moving party, it must be shown as an irreducible minimum that there is a fair chance of
14 success on the merits.” (quoting Martin v. Int’l Olympic Comm., 740 F.2d 670, 675 (9th Cir.
15 1984))).

16 In light of the finding that the complaint does not state a claim for relief, plaintiff is
17 currently unable to demonstrate any likelihood of success on the merits and his motion should be
18 denied. If plaintiff chooses to file an amended complaint, he may file another motion for
19 preliminary injunction at that time.

20 VIII. Plain Language Summary of this Order for a Pro Se Litigant

21 Plaintiff Hill’s request to proceed in forma pauperis is granted and he is not required to
22 pay the entire filing fee immediately.

23 The first amended complaint will be stricken from the record because it is not signed by
24 all the plaintiffs.

25 The original complaint should be dismissed with leave to amend because the facts alleged
26 are not enough to state a claim for relief as to any plaintiff. Additionally, all plaintiffs except
27 plaintiff Hill should be dismissed, but are free to file their own separate action. If plaintiff Hill
28 chooses to amend the complaint, the first amended complaint must include only claims related to

1 plaintiff Hill and must also include all of the information and claims that he wants to make
2 because the court will not look at the claims or information in the original complaint. **Any claims**
3 **not in the first amended complaint will not be considered.**

4 In accordance with the above, IT IS HEREBY ORDERED that:

5 1. Plaintiff Hill's request for leave to proceed in forma pauperis (ECF Nos. 4, 7, 9) is
6 granted.

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

12 3. The Clerk of the Court is directed to strike the first amended complaint (ECF No. 10)
13 from the record.

14 4. The Clerk of the Court is directed to serve a copy of this order on T'varria Coleman,
15 CDCR #AW-6539, at California State Prison, Sacramento, P.O. Box 290066, Represa, CA
16 95671.

17 IT IS FURTHER RECOMMENDED that:

18 1. Plaintiff Hill's motions for preliminary injunction (ECF No. 1 at 12-26; ECF No. 8) be
19 denied.

20 2. The complaint be dismissed with leave to amend as to the claims regarding plaintiff
21 Hill and all plaintiffs except plaintiff Hill be dismissed without prejudice to filing their own,
22 individual complaints. Putative plaintiff T'varria Coleman, who attempted to join in the first
23 amended complaint, should also be dismissed without prejudice to filing his own complaint.

24 3. Within thirty days of an order adopting these findings and recommendations, plaintiff
25 Hill may file an amended complaint that complies with the requirements of the Civil Rights Act,
26 the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint
27 must bear the docket number assigned this case and must be labeled "First Amended Complaint."
28 Plaintiff Hill must file an original and two copies of the amended complaint. Failure to file an

1 amended complaint in accordance with such an order will result in dismissal of this action.

2 4. The Clerk of the Court be directed to send plaintiff Hill a copy of the prisoner
3 complaint form used in this district.

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
9 objections shall be served and filed within fourteen days after service of the objections. The
10 parties are advised that failure to file objections within the specified time may waive the right to
11 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: June 4, 2018

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CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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