

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
9

10 TOMMY ROY KEETON,
11 Plaintiff,
12 v.
13 JEFF LYNCH, et al.,
14 Defendants.

No. 2:20-cv-2270-EFB P

ORDER¹

15
16 Plaintiff is a state prisoner proceeding without counsel in an
17 action brought under 42 U.S.C. § 1983. Plaintiff has filed a
18 complaint and several miscellaneous “motions.” *See* ECF No. 1,
19 5, 7, 9,² 10.

20
21 ¹ Given plaintiff’s visual impairment, the court has
22 increased the font size of this order.

23 ² ECF No. 9 is plaintiff’s application for leave to proceed in
24 forma pauperis. Because plaintiff has been designated a three-
25 strikes litigant for purposes of 28 U.S.C. § 1915(g), *see Keeton v.*
26 *Marshall*, NO. CV 17-1213-FMO (KS), 2018 U.S. Dist. LEXIS
27 156582 (C.D. Cal., Sept. 13, 2018), the court defers ruling on
28 this request. Upon plaintiff’s filing of a legible complaint, the
court will review it to determine whether plaintiff was under

Complaint

1
2 Federal courts must engage in a preliminary screening of
3 cases in which prisoners seek redress from a governmental entity
4 or officer or employee of a governmental entity. 28 U.S.C.
5 § 1915A(a). The court must identify cognizable claims or
6 dismiss the complaint, or any portion of the complaint, if the
7 complaint “is frivolous, malicious, or fails to state a claim upon
8 which relief may be granted,” or “seeks monetary relief from a
9 defendant who is immune from such relief.” *Id.* § 1915A(b).
10 The court cannot discharge its duty under § 1915A because
11 plaintiff’s handwritten 34-page complaint is mostly illegible. *See*
12 E.D. Cal. Local Rule 130(b) (requiring that complaints be
13 legible). To proceed, plaintiff must file an amended complaint
14 that is legible, i.e., typed or neatly written with adequate spacing
15 between letters, words, and lines.

16 Any amended complaint must not add new, unrelated
17 claims. As best the court can tell, the original complaint
18 concerns lack of library access and the mismanagement of
19 plaintiff’s diabetes. *See* ECF No. 1.

Miscellaneous Motions

21 On November 23, 2020, plaintiff filed a “motion to the
22 courts addressing his being denied of the right to attend within
23 the law library facilities.” ECF No. 5. As best the court can tell,
24 plaintiff is asserting that he was denied access to the law library
25 and requests appointment of counsel. It is not clear from the
26

27 imminent danger of serious physical injury when he commenced
28 this action on November 13, 2020. *See* 28 U.S.C. § 1915(g).

1 mostly illegible filing what relief plaintiff seeks from the court
2 (apart from appointment of counsel) or why he requires library
3 access.

4 On December 2, 2020, plaintiff filed a “Notice to the
5 Courts” stating that he had misspelled several of the 23
6 defendants’ names in the original complaint. ECF No. 7. He
7 again requested appointment of counsel and stated he had been
8 denied access to the law library.

9 On May 20, 2021, plaintiff again requested “assignment of
10 counsel,” as well as “large print materials” on account of a visual
11 impairment. ECF No. 10.

12 I. Request for Counsel and Request for Large Print
13 Materials

14 District courts lack authority to require counsel to represent
15 indigent prisoners in section 1983 cases. *Mallard v. United*
16 *States Dist. Court*, 490 U.S. 296, 298 (1989). In exceptional
17 circumstances, the court may request an attorney to voluntarily
18 to represent such a plaintiff. *See* 28 U.S.C. § 1915(e)(1); *Terrell*
19 *v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991); *Wood v.*
20 *Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When
21 determining whether “exceptional circumstances” exist, the court
22 must consider the likelihood of success on the merits as well as
23 the ability of the plaintiff to articulate his claims pro se in light of
24 the complexity of the legal issues involved. *Palmer v. Valdez*,
25 560 F.3d 965, 970 (9th Cir. 2009). Having considered those
26 factors, the court finds there are no exceptional circumstances in
27 this case. Plaintiff’s requests for appointment of counsel are
28 therefore denied.

1 As an accommodation to plaintiff regarding his visual
2 impairment, the court will attempt to send its orders in large
3 print, to the extent possible.

4 II. Law Library Access and Notice of Misspellings

5 If plaintiff finds that he cannot comply with a court-
6 imposed deadline because of lack of library access, he may
7 request an extension of time from the court. In any such request,
8 plaintiff should describe the efforts he has made to meet the
9 deadline and state why library access is required for such
10 compliance. He shall also describe the efforts he has made to
11 access the library and state why those efforts were unsuccessful.

12 As a one-time courtesy, the court will direct the Clerk of the
13 Court to send plaintiff a copy of the handwritten portion of his
14 original complaint. Plaintiff may refer to this courtesy copy to
15 prepare an amended complaint in accordance with this order and
16 doing so should not require library access.

17 In drafting an amended complaint, plaintiff may correct any
18 misspelled names of the defendants.

19 Conclusion

20 Accordingly, IT IS ORDERED that:

- 21 1. The complaint (ECF No. 1) is dismissed with leave to
22 amend within 30 days from the date of service of this
23 order. The complaint must bear the docket number
24 assigned to this case and be titled “Amended
25 Complaint.” Failure to comply with this order will
26 result in dismissal of this action for failure to obey a
27 court order and/or failure to prosecute.

28 /////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The Clerk of Court is directed to send plaintiff (a) a courtesy copy of pages 1-34 of ECF No. 1, and (b) the form for use in filing civil rights actions in this district.
3. The Clerk of the Court shall terminate ECF Nos. 5, 7, and 10 in accordance with this order.

Dated: September 9, 2021.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE