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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOEL LEE WILLIAMS, JR.,
Plaintiff,
v.
B. HURLBERT, et al.,
Defendants.

No. 2:21-cv-0891-TLN-EFB P

ORDER

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a handwritten complaint and a nearly identical but typed version of the same complaint (ECF Nos. 1 & 7), he also filed an application to proceed in forma pauperis (ECF No. 2).

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) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

Screening Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

1 § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion
2 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
3 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
4 relief.” *Id.* § 1915A(b).

5 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
6 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
7 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
8 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
10 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
11 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
12 U.S. 662, 679 (2009).

13 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
15 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
16 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
17 678.

18 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
19 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that the defendant is liable for the
21 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
22 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
23 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
24 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

25 Screening Order

26 Plaintiff’s complaint is plainly deficient insofar as it attempts to bring several unrelated
27 claims against different defendants. Plaintiff’s first and second claims (ECF No. 1 at 5-10) allege
28 that on or around October 6, 2019, defendants Hubert, Ginder, and Spiker denied plaintiff due

1 process in both disciplinary and criminal proceedings charging plaintiff with sexual misconduct.
2 Plaintiff's third claim (*id.* at 11-13) links defendant Philips to plaintiff's loss of his typewriter
3 while confined to administrative segregation between July and October of 2019. Plaintiff's fourth
4 claim (*id.* at 14-16) accuses defendant Neves of "comparative negligence" for "failing to act
5 reasonable in protecting plaintiff[s] substantive right in a prison grievance." In his fifth claim
6 (*id.* at 17-18), plaintiff alleges that defendant Abad sexually harassed him on November 11, 2019.
7 In his final claim (*id.* at 19-21), plaintiff alleges that Hubert "failed to act." Despite the wordiness
8 of the complaint, the circumstances giving rise to this claim are not at all clear.

9 It is well settled that a claimant may not proceed with various unrelated claims against
10 separate defendants:

11 "The controlling principle appears in Fed. R. Civ. P. 18(a): 'A party
12 asserting a claim to relief as an original claim, counterclaim, cross-
13 claim, or third-party claim, may join, either as independent or as
14 alternate claims, as many claims, legal, equitable, or maritime, as the
party has against an opposing party.' Thus multiple claims against a
single party are fine, but Claim A against Defendant 1 should not be
joined with unrelated Claim B against Defendant 2."

15 *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). Here, there appears to be no basis for
16 litigating the due process claims against Hubert, Ginder, and Spiker, the loss of property claim
17 against defendant Neves, and the sexual harassment claim against Abad, all together in this
18 action. These claims seemingly encompass discrete events and separate defendants, rendering
19 them ill-suited to proceed in a single suit. Plaintiff's complaint will be dismissed with leave to
20 amend.

21 Leave to Amend

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

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

3 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *See*
4 *George*, 507 F.3d at 607. Nor, as mentioned above, may he bring unrelated claims against
5 multiple defendants. *Id.*

6 Any amended complaint must be written or typed so that it so that it is complete in itself
7 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
8 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
9 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
10 F.3d 1467, 1474 (9th Cir. 1997) (the “amended complaint supersedes the original, the latter
11 being treated thereafter as non-existent.”) (*quoting Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
12 1967)).

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

20 Conclusion

21 Accordingly, it is ORDERED that:

- 22 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 2) is granted;
- 23 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
24 in accordance with the notice to the California Department of Corrections and
25 Rehabilitation filed concurrently herewith;
- 26 3. Plaintiff’s complaint (ECF No. 1) is dismissed with leave to amend within 30 days
27 from the date of service of this order; and

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4. Failure to comply with any part of this this order may result in dismissal of this
action.

DATED: September 8, 2021.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE