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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN E. JAMES, III,)	No. C 08-2706 JSW (PR)
Plaintiff,)	
v.)	ORDER OF DISMISSAL
CALIFORNIA DEPARTMENT OF CORRECTION, et al,)	
Defendants.)	

INTRODUCTION

Plaintiff, a California prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983. The complaint was dismissed with leave to amend, and Plaintiff filed a timely amended complaint. In this order, the Court reviews Plaintiff’s amended complaint pursuant to 28 U.S.C. § 1915A. The amended complaint is dismissed for failing to cure the deficiencies in the original complaint, as ordered by the Court.

DISCUSSION

I. Standard of Review

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. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a

1 defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be
2 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.
3 1990).

4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:
5 (1) that a right secured by the Constitution or laws of the United States was violated, and
6 (2) that the alleged violation was committed by a person acting under the color of state
7 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

8 II Legal Claims

9 The original complaint and attachments consisted of 88 pages of many unrelated
10 claims against 46 different defendants. The claims were wide-ranging, including claims
11 of excessive force, conspiracy, discrimination, First Amendment violations and due
12 process violations, and arose from a number of distinct incidents. Plaintiff also failed to
13 clearly identify which claims were brought against which Defendants, or to set forth a
14 concise statement regarding the substance of each claim and the actions of each
15 Defendant giving rise to the claim. The complaint was dismissed because, among other
16 things, it did not comply with Rule 8(e)’s requirement that pleadings set forth a “short
17 and plain statement” for relief, and did not identify the conduct of each individual
18 Defendant that caused a violation of Plaintiff’s constitutional rights. Plaintiff was given
19 leave to file an amended complaint curing these deficiencies. The amended complaint
20 fails to do so.

21 The amended complaint does not comply with the Court’s instructions, pursuant
22 to Federal Rule of Civil Procedure 8(e), that Plaintiff set forth "a short and plain
23 statement of the claim showing that the pleader is entitled to relief." Rule 8(e) requires
24 that each averment of a pleading be "simple, concise, and direct," and the failure to
25 adhere to this requirement may be the basis for dismissal. *McHenry v. Renne*, 84 F.3d
26 1172, 1179 (9th Cir. 1996) (affirming dismissal of complaint that was "argumentative,
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1 prolix, replete with redundancy, and largely irrelevant"). The amended complaint does
2 not have simple, concise and direct averments. Instead, the rambling factual allegations
3 include unnecessary minutiae about dozens of interactions between Plaintiff, other
4 inmates and staff, and the amended complaint is replete with conclusory arguments
5 about retaliation, cover-ups and conspiracies. Like the original complaint, moreover, the
6 amended complaint does not separate out the allegations into distinct claims but rather
7 combines many disparate claims and arguments, rendering it impossible to discern
8 precisely what claims Plaintiff is asserting.

9 The amended complaint, like the original complaint, also improperly joins many
10 unrelated claims. Rule 20(a) provides that all persons "may be joined in one action as
11 defendants if there is asserted against them jointly, severally, or in the alternative, any
12 right to relief in respect of or arising out of the same transaction, occurrence, or series of
13 transactions or occurrences and if any question of law or fact common to all defendants
14 will arise in the action." The amended complaint sets forth even more unrelated claims
15 against more defendants than the original complaint. It is long and rambling, names over
16 60 different defendants, and, like the original complaint, covers a wide variety of prison
17 conditions and unrelated incidents. Plaintiff includes allegations of excessive force by
18 different defendants on different occasions, the "chilling of this First Amendment rights
19 via retaliation, denial of administrative remedies, conspiracies to "cover up" criminal
20 activities, attempted murder, harassment, fabricated charges of rules violations, refusal to
21 move cells, bad food, deliberate indifference to medical needs, and interference with
22 mail. These disparate allegations and claims arise from many distinct incidents, and
23 there is no common question of law or fact common to all 60 defendants. Plaintiff's
24 conclusory allegations of conspiracies do not alter this conclusion. Indeed, the amended
25 complaint appears to touch upon everything Plaintiff found objectionable at his prison
26 between the end of 2007 and the middle of 2008. Rule 20 prohibits the kind of grab-bag

1 pleading Plaintiff submits, but rather unrelated claims must be filed in separate
2 complaints in separate cases. The improper joinder of claims cannot be remedied in this
3 case by dismissal of the unrelated claims because there is no indication from Plaintiff
4 which claims he wants to drop and which he wants to keep. *See* Fed. R. Civ. P. 21.

5 Third, it appears that plaintiff has improperly included as defendants persons who
6 did no more than fail to grant his administrative appeals. There is no constitutional right
7 to a prison administrative appeal or grievance system. *Mann v. Adams*, 855 F.2d 639,
8 640 (9th Cir.1988). Plaintiff had no federal constitutional right to a properly functioning
9 appeal system. An incorrect decision on an administrative appeal or a failure to handle it
10 in a particular way therefore does not amount to a violation of his constitutional rights.

11 Plaintiff has been granted leave to amend once, and his amended complaint not
12 only contains new problems, but also does not correct the deficiencies identified in the
13 original complaint. Consequently, further leave to amend will not be granted.

14 CONCLUSION

15 For the foregoing reasons and for good cause shown, this action is DISMISSED
16 without prejudice to Plaintiff filing his unrelated claims in separate complaints in new
17 cases.

18 The Clerk shall close the file and enter judgment in favor of Defendants.

19 IT IS SO ORDERED.

20 DATED: February 9, 2011



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22 JEFFREY S. WHITE
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 JOHN E. JAMES,

Case Number: CV08-02706 JSW

6 Plaintiff,

CERTIFICATE OF SERVICE

7 v.

8 CA DEPT OF CORRECTION et al,

9 Defendant.
10 _____/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
12 Court, Northern District of California.

13 That on February 9, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
15 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
16 delivery receptacle located in the Clerk's office.

17 John E. James
18 P.O. Box 8500
19 P13474
20 Coalinga, CA 93210

Dated: February 9, 2011

Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk