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

JAMAL DANWELL ORTIZ,

NO. C 11-2380 WHA (PR)

Plaintiff,

**ORDER DISMISSING CASE WITH
LEAVE TO AMEND**

v.

MATTHEW L. CATE; D. FOSTION;
D. STARK; G.D. LEWIS; P.T. SMITH;
CRUISE; R. BELL; M.J. NIMROD;
DR. GLINES; V. COMPELLO;
OFFICER TRIMM; OFFICER
CARDENAS,

Defendants.

_____ /

INTRODUCTION

Plaintiff, an inmate at Pelican Bay State Prison proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. 1983. He has been granted leave to proceed in forma pauperis in a separate matter. Based upon a review of the complaint pursuant to 28 U.S.C. 1915A, it is dismissed with leave to amend.

DISCUSSION

A. 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). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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1 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
2 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
3 statement need only "give the defendant fair notice of what the . . . claim is and the grounds
4 upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
5 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
6 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
7 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
8 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
9 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
10 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
11 at 1974.

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

16 **B. LEGAL CLAIMS**

17 The complaint contains a substantial number of improperly joined claims. "A party
18 asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or
19 alternative claims, as many claims as it has against an opposing party." Fed. R. Civ. P. 18(a).
20 The rules are somewhat different when, as here, there are multiple parties. Multiple parties may
21 be joined as defendants in one action only "if any right to relief is asserted against them jointly,
22 severally, or in the alternative with respect to or arising out of the same transaction, occurrence,
23 or series of transactions or occurrences; and any question of law or fact common to all
24 defendants will arise in the action." *Id.* at 20(a)(2).

25 The upshot of these rules is that "multiple claims against a single party are fine, but
26 Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant
27 2." *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). "Unrelated claims against different
28 defendants belong in different suits." *Ibid.*


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1. The complaint is **DISMISSED** with leave to amend, as indicated above, within thirty days from the date of this order. The amended complaint must include the caption and civil case number used in this order (No. C 11-2380 WHA (PR)) and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time and in accordance with this order will result in the dismissal of these claims.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing with the clerk a separate paper headed "Notice of Change of Address." Papers intended to be filed in this case should be addressed to the clerk and not to the undersigned. Petitioner also must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: June 30, 2011.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE