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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 KEVIN MAURICE TENNIN,)

9 Plaintiff,)

10 v.)

11 BLASE DEL, et al.,)

12 Defendants.)
_____)

No. C 11-4362 JSW (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

13
14 **INTRODUCTION**

15 Plaintiff, a California prisoner proceeding pro se, filed this rights action pursuant
16 to 42 U.S.C. § 1983. He has been granted leave to proceed *in forma pauperis* in a
17 separate order. The Court now reviews the complaint and dismisses with leave to
18 amend.

19 **DISCUSSION**

20 I. Standard of Review

21 Federal courts must engage in a preliminary screening of cases in which prisoners
22 seek redress from a governmental entity or officer or employee of a governmental entity.
23 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss any portion
24 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon
25 which relief may be granted,” or “seeks monetary relief from a defendant who is immune
26 from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed.
27 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

28 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement

1 of the claim showing that the pleader is entitled to relief." "Specific facts are not
2 necessary; the statement need only "give the defendant fair notice of what the . . . claim
3 is and the grounds upon which it rests.""
4 *Erickson v. Pardus*, 127 S. Ct. 2197, 2200
5 (2007) (citations omitted). Although in order to state a claim a complaint "does not need
6 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his
7 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
8 recitation of the elements of a cause of action will not do. . . . Factual allegations must
9 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*
10 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer
11 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se
12 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,
699 (9th Cir. 1990).

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:

14 (1) that a right secured by the Constitution or laws of the United States was violated, and
15 (2) that the alleged violation was committed by a person acting under the color of state
16 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

17 II. Legal Claims

18 Plaintiff's complaint includes a variety of brief and conclusory allegations against
19 a number of different prison officials. He alleges that 26 letter "went missing", that
20 Defendant Officer Del "sexual[ly] threaten[ed]" him, that Defendant Officer Bohannan
21 "physically assaulted" him, that Defendant Spalding did not help him, that Lieutenant
22 Perry told him "to shup up I know nothing," that Defendant Rice told him to take a
23 polygraph test, that Officer MacDonald threatened that other officer would beat him up,
24 that Investigator Brown gave him an "item" for buying heroin, and that Warden Smith
25 said that an investigation had been done.

26 The allegations of verbal threats and verbal harassment do not, alone, state a
27 cognizable claim for relief. *See Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir. 1997)
28 (allegations of mere threats also are not cognizable under § 1983); *Gaut v. Sunn*, 810

1 F.2d 923, 925 (9th Cir. 1987) (mere threat does not constitute constitutional wrong, nor
2 do allegations that naked threat was for purpose of denying access to courts compel
3 contrary result). Those claims will therefore be dismissed.

4 The remaining allegations are too vague and conclusory to state a cognizable
5 claim. Federal Rule of Civil Procedure 8(a)(2) requires that the allegations "give the
6 defendant fair notice of what the . . . claim is and the grounds upon which it rests."
7 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). "Conclusory allegations
8 without more are insufficient." *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810
9 (9th Cir. 1988). Plaintiff's allegations do not give the Defendants fair notice of the
10 grounds upon which his claims rest. For example, Plaintiff alleges that Bohannan
11 "assaulted" him, but he does not allege even the basic facts supporting this allegation,
12 such as when, where or how the force was used, how much force was applied and
13 whether there was any resistance. The claim about missing mail does not allege what the
14 mail was, whether it was confidential, or who was responsible for losing it. Plaintiff will
15 be given leave to amend his complaint to state claims, other than claims of mere verbal
16 harassment or racial threat, to provide allege facts from which the Defendants will
17 receive fair notice of the grounds upon which the claims rest.

18 CONCLUSION

19 1. The complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff shall
20 file an amended complaint within *thirty (30) days from the date of this order* that cures
21 the deficiencies noted above. The amendment must include the caption and civil case
22 number used in this order and the words "COURT-ORDERED FIRST AMENDED
23 COMPLAINT" and the case number for this case (No. C 11-4362 JSW (PR)) on the first
24 page. Because an amended complaint completely replaces the original complaint, *see*
25 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff may not incorporate
26 material from the original or amended complaints by reference. Failure to amend within
27 the designated time and in accordance with this order will result in the dismissal of this
28 action.

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

5 TENNIN,
6 Plaintiff,

Case Number: CV11-04362 JSW

CERTIFICATE OF SERVICE

7 v.

8 DEL 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 November 2, 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 Kevin M. Tennin
18 T29992
19 Pelican Bay State Prison
20 P.O. Box 7500
21 Crescent City, CA 95532

22 Dated: November 2, 2011



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