

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

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

HAROLD V. FRANKLIN,

Plaintiff,

v.

K. FLORES, et al.,

Defendants.

---

) No. C 12-0703 JSW (PR)

) **ORDER OF DISMISSAL WITH**

) **LEAVE TO AMEND**

13  
14

**INTRODUCTION**

15 Plaintiff, a California prisoner, has filed this pro se civil rights complaint under 42  
16 U.S.C. § 1983. Plaintiff's application to proceed *in forma pauperis* is granted in a  
17 separate order. This Court now reviews the Complaint pursuant to 28 U.S.C. § 1915A  
18 and dismisses the complaint with leave to amend within thirty days.

19  
20

**DISCUSSION**

21  
22

I. Standard of Review

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

1 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
2 of the claim showing that the pleader is entitled to relief." "Specific facts are not  
3 necessary; the statement need only "give the defendant fair notice of what the . . . claim  
4 is and the grounds upon which it rests." *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,  
13 699 (9th Cir. 1990).

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

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

## 18 II. Discussion

19 The complaint contains a number of improperly joined claims. Federal Rule 20  
20 provides:

21 All persons. . . may be joined in one action as defendants if there is asserted  
22 against them jointly, severally, or in the alternative, any right to relief  
23 arising out of the same transaction, occurrence or series of transactions or  
occurrences and if any question of law or fact common to all defendants  
will arise in the action.

24 F. R. Civ. P. 20(a).

25 Plaintiff's complaint includes a wide variety of claims arising from many different  
26 incidents at four different prisons. His claims that certain defendants falsified  
27

1 disciplinary reports, that others locked him down due to his race, and that others applied  
2 excessive force. He also includes claims of inadequate medical care, being housed with  
3 dangerous inmates, inadequate law library access, retaliation, unsafe conditions,  
4 improper classification, and lack of accommodations for his disability. Different  
5 defendants at different prisons are allegedly responsible for these claimed constitutional  
6 violations. As alleged, his claims did not arise out of the same transaction, occurrence or  
7 series of occurrences, and do not involve a common question of law or fact. Indeed,  
8 Plaintiff appears to be complaining in a single complaint about virtually everything that  
9 has happened to him since he was taken into custody in the state prison system. Rule  
10 20(a) requires that a plaintiff cannot assert a grab-bag of unrelated claims against  
11 different defendants. Accordingly, the Court finds the claims and defendants improperly  
12 joined.

13 Although a court may strike individual claims that are not properly joined, the  
14 Court cannot here determine which of the many claims Plaintiff may wish to keep and  
15 which he wants to omit. Thus, instead of dismissing certain claims and defendants, the  
16 Court will dismiss the complaint with leave to file an amended complaint. *See* Fed. R.  
17 Civ. P. 21. In his amended complaint, Plaintiff may only allege claims that (a) arise out  
18 of the same transaction, occurrence, or series of transactions or occurrences and (b)  
19 present questions of law or fact common to all defendants named therein. Claims that do  
20 not satisfy Rule 20(a) must be alleged in separate complaints filed in separate actions.  
21 The amended complaint must comply with Federal Rule of Civil Procedure 20(a)  
22 concerning joinder of claims and defendants, and if it does not, then this action will be  
23 dismissed.

24 Plaintiff's amended complaint may not include claims arising out of events that  
25 took place at, or against defendants located at, prisons outside of the venue of this Court.  
26 *See* 28 U.S.C. §§ 1391(b), 1404, 1406(a). Plaintiff's complaint includes claims arising  
27

1 out of events at Salinas Valley State Prison (“SVSP”), California State Prison – Los  
2 Angeles (“CSP-L.A.”), Wasco State Prison (“WSP”), and North Kern State Prison  
3 (“NKSP”). SVSP is located within the venue of this Court, but CSP – L.A. is located  
4 within the venue of the Central District of California, and WSP and NKSP are located  
5 within the venue of the Eastern District of California. *See* 28 U.S.C. § 84(a)-(c).

6 Therefore, Plaintiff should not include in his amended complaint in this Court any claims  
7 arising out of events occurring at or against defendants located at CSP – L.A., WSP, or  
8 NKSP. Claims from CSP-L.A. should be filed in the Central District, and claims from  
9 WSP or NKSP should be filed in the Eastern District.

10 The Court notes that Plaintiff has included over 1200 pages of unpaginated  
11 exhibits that are neither cited nor explained in the complaint. Such lengthy and prolix  
12 pleadings do not comply with Rule 8(a). *McHenry v. Renne*, 84 F.3d 1172, 1177,  
13 1178-79 (9th Cir. 1996); *see also Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671,  
14 673-74 (9th Cir. 1981) (affirming dismissal of complaint that was "verbose, confusing  
15 and almost entirely conclusory"); *cf. Hearn v. San Bernardino Police Dept.*, 530 F.3d  
16 1124, 1131 (9th Cir. 2008) (a lengthy pleading is permissible only if it is "coherent,  
17 well-organized, and state[s] legally viable claims"). In his amended complaint, Plaintiff  
18 must not attach voluminous exhibits and assume that the Court will read through them to  
19 discover what factual allegations they may have that support his claims. Rather, Plaintiff  
20 must include in the amended complaint any factual allegations that support his properly  
21 joined claim, and any attached exhibits must be paginated, cited and explained in the  
22 amended complaint.

## 23 CONCLUSION

24 1. The complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff shall  
25 file an amended complaint within **thirty (30) days from the date this order is filed**. The  
26 amendment must include the caption and civil case number used in this order (No. C 12-  
27

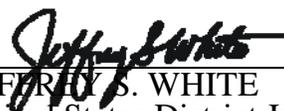
1 0703 JSW (PR)) and the words "COURT-ORDERED FIRST AMENDED  
2 COMPLAINT" on the first page. Because an amended complaint completely replaces  
3 the original complaint, *see Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992),  
4 Plaintiff may not incorporate material from the original or amended complaints by  
5 reference. Failure to amend within the designated time and in accordance with this order  
6 will result in the dismissal of this action.

7 2. As Plaintiff's claims are within his personal knowledge, and in light of both his  
8 prior opportunity to amend and the age of this case, only a minor extension of this  
9 deadline will be considered and will only be granted upon a showing by Plaintiff of good  
10 cause.

11 3. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
12 Court informed of any change of address and must comply with the Court's orders in a  
13 timely fashion. Failure to do so may result in the dismissal of this action under Federal  
14 Rule of Civil Procedure 41(b).

15 IT IS SO ORDERED.

16 DATED: April 18, 2012

17  
18   
19 \_\_\_\_\_  
20 JEFFREY S. WHITE  
21 United States District Judge  
22  
23  
24  
25  
26  
27  
28

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

5 HAROLD V FRANKLIN,  
6 Plaintiff,

Case Number: CV12-00703 JSW

7 **CERTIFICATE OF SERVICE**

8 v.

9 K FLORES et al,  
10 Defendant.

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 April 18, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said  
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing  
15 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery  
16 receptacle located in the Clerk's office.

17 Harold V. Franklin AA6298  
18 California State Prison - Corcoran  
19 4001 King Avenue  
P.O. Box 8800  
Corcoran, CA 93212-8800

20 Dated: April 18, 2012



21 Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk  
22  
23  
24  
25  
26  
27  
28