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28UNITED STATES DISTRICT COURT  
For the Northern District of California

## UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

THOMAS E. SMITH,

No. C 12-03533 LB

Plaintiff,

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS**

v.

STEVEN HARRINGTON, PhD, et al.,

[Re: ECF No. 6]

Defendants.  
\_\_\_\_\_ /**I. INTRODUCTION**

Plaintiff Thomas Smith, initially proceeding *pro se*, filed a complaint against the Santa Rosa City School District and eight individuals related to it in some way (collectively, "Defendants"). Essentially, he alleges that Defendants violated both his and his minor daughter's civil rights and discriminated against his daughter because of her disability. Defendants move to dismiss Mr. Smith's First Amended Complaint ("FAC"). Motion to Dismiss, ECF No. 6 at 1-2.<sup>1</sup> Pursuant to Civil Local Rule 7-1(b), the court finds this matter suitable for determination without oral argument and vacates the October 18, 2012 hearing. Upon consideration of the papers submitted and the applicable law, the court **GRANTS** Defendants' motion and **DISMISSES WITHOUT PREJUDICE** Mr. Smith's complaint.

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<sup>1</sup> Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 **II. BACKGROUND**

2 As Mr. Smith’s counsel concedes, the First Amended Complaint that Mr. Smith drafted is “not a  
3 model of pleading.” Opposition, ECF No. 12 at 2. Indeed, the “scattershot” and “non-linear”  
4 allegations (Mr. Smith’s counsel’s words), *see* Opposition, ECF No. 12 at 5, make it difficult for the  
5 court to summarize Mr. Smith’s allegations with confidence. Accordingly, the court quotes Mr.  
6 Smith’s counsel’s summary of them:

7 Factually, this case is succinctly stated as follows: Plaintiff’s daughter (A.S.)  
8 suffers from Tourette’s Syndrome. [FAC, ECF No. 5, ¶ 61.] A.S. attended Proctor  
9 Terrace Elementary School during all relevant times. Plaintiff sought proper  
10 treatment for his daughter by defendants in their role as educators. [*Id.*, ¶¶ 55, 56, 57.]  
11 Not only did defendants fail to respond properly to his repeated communications with  
12 them about egregiously bad conduct and conditions that his daughter had been  
13 subjected to at the hands of her classmates, they failed to provide AS with a proper  
14 education and further repeatedly failed to communicate and respond to Plaintiff in his  
15 efforts to raise these issues with them. [*Id.*, ¶¶ 12-16, 51.]

12 Understandably upset with the lack of a proper response to his concerns, on April  
13 17, 2012, Plaintiff expressed his frustration and anger while present at the school in  
14 speaking with defendants. [*Id.*, ¶ 77.] In a deliberately exaggerated and substantively  
15 unsupportable response, defendants attempted to obtain a temporary restraining order  
16 (TRO) against Plaintiff in California Superior Court alleging that he presented a risk  
17 of physical injury to them. After considering the evidence and argument presented by  
18 defendants in support of the requested TRO, a Superior Court rejected the arguments  
19 soundly. [*Id.*, Ex. B.] When that effort failed, defendants went forum shopping and  
20 presented their request for a TRO to a second judge based upon the same set of  
21 allegations of Plaintiff’s alleged misconduct on April 17, 2012. Once again, their  
22 request for a TRO, was denied. [*Id.*, FAC, Ex. C.]

18 Despite twice being advised that Plaintiff’s behavior was not even incendiary  
19 enough to support a TRO, and in apparent retaliation, defendants using the same  
20 allegations that previously failed to result in a TRO, swore out statements against  
21 Plaintiff using their apparent authority as “mandated reporters” to falsely allege that  
22 he was subjecting A.S. to emotional abuse, in the form of creating undue anxiety.  
23 Based solely upon the alleged retaliatory and deliberately false allegations made by  
24 defendants, A.S. was removed by Child Protective Services from her father’s home.  
25 [*Id.*, ¶ 19.]

23 Remarkably just 30 days prior to making said allegations that Plaintiff was an  
24 unfit parent, these same Defendants completed assessment documents related to A.S.  
25 which concluded that A.S. had a good support system at home and that there were no  
26 known problems in her home. At that time, and for quite some time prior, A.S. was  
27 living with Plaintiff in his sole custody. [*Id.*, ¶ 20.]

26 Opposition, ECF No. 12 at 3-4.

27 Mr. Smith filed his original complaint on July 6, 2012. Complaint, ECF No. 1. Four days later,  
28 on July 10, 2012, he filed a First Amended Complaint, which contains the following nine claims: (1)

1 “Due Process Violation of IDEA & 34 C.F.R. § 300.(9)(I)”;

2 (2) disability harassment under §

3 2(b)(2)-5 of the Americans with Disabilities Amendments Act of 2008 and 42 U.S.C. § 12131, et

4 seq.; (3) retaliation under § 504 of the Rehabilitation Act of 1973; (4) violation of due process under

5 42 U.S.C. § 1983; (5) failure to train or supervise in violation of 42 U.S.C. § 1983; (6) supervisory

6 liability under 42 U.S.C. § 1983; (7) conspiracy under 42 U.S.C. § 1985(b); (8) “Color of Authority

7 used for civil rights violations pursuant to 42 U.S.C. § 1983”; and (9) “Abandonment of Government

8 Immunity by Federal Law Violations.” FAC, ECF No. 5, ¶¶ 28-116. He seeks compensatory and

9 punitive damages, interest, attorneys’ fees, and costs. *Id.* at 27. He also seeks an injunction “against

10 any party from inveigling false testimony from A.S.” and a court order allowing attorney Carl

11 Gonser to interview A.S. for purposes of determining if her interests are being adequately

12 represented in the pending dependency matter. *Id.* at 28.

13 On July 30, 2012, Defendants filed a motion under Federal Rule of Civil Procedure 12(b)(6) to

14 dismiss Mr. Smith’s First Amended Complaint for failure to state a claim for relief. Motion to

15 Dismiss, ECF No. 6. After that, Mr. Smith hired an attorney and filed an opposition, Opposition,

16 ECF No. 12, and Defendants filed a reply, Reply, ECF No. 16.

### 17 III. LEGAL STANDARD

18 Rule 8(a) requires that a complaint contain a “short and plain statement of the claim showing that

19 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A complaint must therefore provide a

20 defendant with “fair notice” of the claims against it and the grounds for relief. *See Bell Atlantic*

21 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation and citation omitted).

22 A court may dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) when it does

23 not contain enough facts to state a claim to relief that is plausible on its face. *See Twombly*, 550

24 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the

25 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

26 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). “The plausibility standard is not akin to a

27 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted

28 unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 557.). “While a complaint attacked by a Rule

12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to

1 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a  
2 formulaic recitation of the elements of a cause of action will not do. Factual allegations must be  
3 enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (internal  
4 citations and parentheticals omitted).

5 In considering a motion to dismiss, a court must accept all of the plaintiff’s allegations as true  
6 and construe them in the light most favorable to the plaintiff. *See id.* at 550; *Erickson v. Pardus*, 551  
7 U.S. 89, 93-94 (2007); *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007).

8 If the court dismisses the complaint, it should grant leave to amend even if no request to amend  
9 is made “unless it determines that the pleading could not possibly be cured by the allegation of other  
10 facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting *Cook, Perkiss and Liehe, Inc.*  
11 *v. Northern California Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990)). But when a party  
12 repeatedly fails to cure deficiencies, the court may order dismissal without leave to amend. *See*  
13 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (affirming dismissal with prejudice where  
14 district court had instructed *pro se* plaintiff regarding deficiencies in prior order dismissing claim  
15 with leave to amend).

#### 16 IV. DISCUSSION

17 In their motion, Defendants make the following arguments: (1) the FAC does not provide them  
18 with “fair notice” of his claims and, thus, does not satisfy Rule 8; (2) the FAC must be dismissed  
19 because all of his claims are premised on a violation of the Individuals with Disabilities Education  
20 Act (“IDEA”), but he did not exhaust his administrative remedies before filing suit; and (3) the FAC  
21 must be dismissed because none of his claims are sufficiently pled. *See generally* Motion to  
22 Dismiss, ECF No. 6.

23 The court is persuaded by Defendants’ first argument. “Although *pro se* pleadings are liberally  
24 construed . . . a *pro se* plaintiff must still satisfy the pleading requirements of Federal Rule of Civil  
25 Procedure 8(a).” *Jackson v. Napolitano*, CV-09-1822-PHX-LOA, 2010 WL 94110 at \*2 (D. Ariz.  
26 Jan. 5, 2010) (granting defendant’s motion to dismiss *pro se* complaint for failure to state claim for  
27 disability discrimination) (internal citations omitted). It is true that Mr. Smith, as a then-*pro se*  
28 plaintiff, did a better-than-average job in drafting his First Amended Complaint. *See generally* FAC,

1 ECF No. 5. Still, the court agrees with Mr. Smith’s counsel that the allegations are “scattershot” and  
2 “non-linear.” *See* Opposition, ECF No. 12 at 5. His FAC does not contain “short and plain  
3 statement[s] of the claim[s] showing that [he] is entitled to relief,” *see* Fed. R. Civ. P. 8(a)(2), which  
4 makes it difficult to understand the story he is trying to tell.

5 This confusion can be seen by looking at the moving papers, as counsel for both sides had to  
6 offer their own versions of what Mr. Smith may have been attempting to allege in his First Amended  
7 Complaint. The court quoted Mr. Smith’s counsel’s version above, *see* Opposition, ECF No. 12 at  
8 3-4, and Defendants’s counsel offered a similar, but far from identical, version in their motion, *see*  
9 Motion to Dismiss, ECF No. 6 at 3-4. That counsel—particularly Mr. Smith’s counsel—had to do  
10 this suggests that the FAC does not meet the requirements of Rule 8. *See Murray v. Sevier*, 149  
11 F.R.D. 638, 640 (D. Kan. 1993) (“When the drafter of the complaint is reduced to defending it by  
12 ‘what I meant to say’ explanations coupled with complicated legal arguments, the complaint does  
13 not meet the definition of a ‘plain statement.’”). Of course, parties opposite each other in litigation  
14 often will have different versions of the relevant facts of a case, but here the parties have different  
15 versions of the allegations, and even Mr. Smith’s counsel concedes that the court and the parties  
16 “would be well-served to have a more coherent statement of the case” put into the record,  
17 Opposition, ECF No. 12 at 2.

18 The lack of clear allegations also could present challenges down the road. In *McHenry v. Renne*,  
19 the Ninth Circuit recognized the attendant dangers of allowing an incoherent complaint to stand. 84  
20 F.3d 1172, 1179-80 (9th Cir. 1996) (affirming, grant of motion to dismiss pursuant to Rule 8 and  
21 Rule 12(e)). In that case, plaintiffs filed a lengthy complaint that contained several irrelevant  
22 allegations, political gripes, and failed to provide defendants with notice as to the actions they  
23 allegedly undertook that violated plaintiff’s civil rights. In reviewing the complaint, the appellate  
24 panel explained: “Prolix, confusing complaints such as the ones plaintiffs filed in this case impose  
25 unfair burdens on litigants and judges. As a practical matter, the judge and opposing counsel, in  
26 order to perform their responsibilities, cannot use a complaint such as the one plaintiffs filed, and  
27 must prepare outlines to determine who is being sued for what. Defendants are then put at risk that  
28 their outline differs from the judge’s, that plaintiffs will surprise them with something new at trial

1 which they reasonably did not understand to be in the case at all, and that res judicata effects of  
2 settlement or judgment will be different from what they reasonably expected.” *Id.* It went onto note  
3 that confusing complaints also can lead to discovery disputes and lengthy trials, prejudicing litigants  
4 and others who follow the rules. *Id.* at 1180. The court recognizes, of course, that Mr. Smith’s First  
5 Amended Complaint is not nearly as insufficient as the one at issue in *McHenry*, but the risks  
6 mentioned by the Ninth Circuit are nonetheless relevant where, as here, the parties and the court  
7 cannot even agree on what Mr. Smith has alleged.

8 For this reason alone, the court will grant Defendants’ motion to dismiss. When the allegations  
9 themselves are so unclear as to warrant dismissal for failing to meet Rule 8’s requirement, the court  
10 does not believe it is appropriate to consider and rule on Defendants’ other arguments, which  
11 necessary rely upon the clarity of those allegations. Plus, now that Mr. Smith has retained counsel,  
12 the court is hopeful that many of the problems described by Defendants will be resolved in a Second  
13 Amended Complaint. Should these problems still be present in it, the court will address them upon  
14 the filing of a subsequent motion to dismiss.

15 **V. CONCLUSION**

16 Based on the foregoing, the court **GRANTS** Defendants’ motion and **DISMISSES WITHOUT**  
17 **PREJUDICE** Mr. Smith’s complaint. Mr. Smith may file a Second Amended Complaint within 21  
18 days from the date of this order.

19 **IT IS SO ORDERED.**

20 Dated: October 10, 2012



21 LAUREL BEELER  
22 United States Magistrate Judge  
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