

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MALINKA MOYE,
Plaintiff,

No. C-14-3121 EMC (pr)

v.

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

NAPA STATE HOSPITAL; *et al.*,
Defendants.

I. INTRODUCTION

Malinka Tacuma Wade Moye, an inmate at the San Francisco County Jail, filed a *pro se* civil rights action under 42 U.S.C. § 1983. His complaint is now before the Court for review under 28 U.S.C. § 1915A.

II. BACKGROUND

In his garbled complaint in this action, Mr. Moye alleges many conclusions but virtually no facts. He alleges that he is suing “over use of unreasonable, unnecessary, excessive force, extortion, slavery & kidnapping under false pretenses to admitt plaintiff into State Hospital. Past date of expired Statute of limitations on 5-11-11. 11-08-11.” Docket # 1 at 2 (errors in source).

III. DISCUSSION

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 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

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

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

8 The complaint has several defects and must be dismissed. First, the complaint fails to allege
9 “a short and plain statement of the claim showing that the pleader is entitled to relief,” as required by
10 Federal Rule of Civil Procedure 8(a)(2). The conclusory allegations in the complaint fail to satisfy
11 some of the basic purposes of a complaint: framing the dispute and giving the defendants and court
12 notice of the claims upon which relief is sought. “Specific facts are not necessary; the statement
13 need only . . . give the defendant fair notice of what the . . . claim is and the grounds upon which it
14 rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations and internal quotation marks omitted).
15 Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to
16 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a
17 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be
18 enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550
19 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to
20 relief that is plausible on its face.” *Id.* at 570. In his amended complaint, Mr. Moyer must allege a
21 short and plain statement of each claim for relief he wishes to assert.

22 Mr. Moyer indicates that he was sent to Napa State Hospital “illegally” yet also indicates that
23 he was sent there when he was found mentally incompetent to stand trial. *See* Docket # 1 at 4. In
24 his amended complaint, he should allege facts showing why the transfer to Napa State Hospital was
25 illegal. He also should allege whether his transfer was pursuant to court order. Mr. Moyer also
26 alleges that he was admitted “into state hospital. past date of expired statute of limitations 5-11-11.
27 11-08-11.” Docket # 1 at 2 (errors in source). He does not identify the statute of limitations to
28 which he refers, or how a statute of limitations would preclude his admission to a state hospital. In

1 his amended complaint, Mr. Moyer must explain with more clarity his claim that he was kept at the
2 hospital too long. Mr. Moyer also alleges that someone intentionally and “illegally administered
3 psychological drugs” to him. Docket # 1 at 2. In his amended complaint, he must explain why the
4 administration of the drugs was illegal and whether it was pursuant to a court order.

5 Second, the complaint does not adequately link defendants to legal claims. In his amended
6 complaint, Mr. Moyer must be careful to allege facts showing the basis for liability for each
7 defendant. He should not refer to them as a group (e.g., “the defendants”); rather, he should identify
8 each involved defendant by name and link each of them to his claim by explaining what each
9 involved defendant did or failed to do that caused a violation of his rights. *See Leer v. Murphy*, 844
10 F.2d 628, 634 (9th Cir. 1988). Mr. Moyer is cautioned that there is no respondeat superior liability
11 under Section 1983, i.e. no liability under the theory that one is responsible for the actions or
12 omissions of an employee. Liability under Section 1983 arises only upon a showing of personal
13 participation by the defendant. *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989).

14 Plaintiff names as defendants the California State Board of Psychology and the California
15 Board of Medical Doctors, apparently on the theory that they licensed members of the medical staff
16 at Napa State Hospital. The fact that these two entities licensed the alleged wrongdoers is not
17 sufficient to hold them liable under § 1983, as it would be impermissible respondeat superior
18 liability.¹ *See Tsao v. Desert Palace, Inc.*, 698 F. 3d 1128, 1139 (9th Cir. 2012) (no respondeat
19 superior liability under § 1983 for the actions of the private entity’s employees).

20 One of the named defendants is Napa State Hospital. The Eleventh Amendment to the U.S.
21 Constitution bars from the federal courts suits against a state by its own citizens, citizens of another

23 ¹ If Mr. Moyer wants to sue the individual doctors and psychologists he can do so. If he does
24 not know their names, he may sue them as Jane Doe and John Doe defendants. The use of “Jane
25 Doe” or “John Doe” to identify a defendant is not favored in the Ninth Circuit, *see Gillespie v.*
26 *Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980), but sometimes is necessary when a plaintiff cannot
27 discover the identity of the defendant before filing the complaint. Although the use of a Doe
28 defendant designation is acceptable to withstand dismissal of a complaint at the initial review stage,
using a Doe defendant designation creates its own problem: that person cannot be served with
process until he or she is identified by his or her real name. Mr. Moyer must take steps promptly to
discover the full name (i.e., first and last name) of each of the Doe defendants and provide that
information to the Court in his amended complaint. The burden remains on the plaintiff; the Court
will not undertake to investigate the names and identities of unnamed defendants.

1 state, or citizens or subjects of any foreign state. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234,
2 237-38 (1985). Eleventh Amendment immunity also extends to suits against a state agency. *See*
3 *Brown v. Cal. Dep't of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (California Department of
4 Corrections and California Board of Prison Terms entitled to Eleventh Amendment immunity); *see*
5 *also Allison v. Cal. Adult Auth.*, 419 F.2d 822, 823 (9th Cir. 1969) (California Adult Authority and
6 San Quentin State Prison not persons within meaning of Civil Rights Act). Napa State Hospital is
7 dismissed from this action because it is an agency of the State of California facility and has Eleventh
8 Amendment immunity against the suit.

9 Third, this action is one of 18 actions filed by Mr. Moye in a one-month period, and there are
10 many overlapping allegations between the many complaints and all of the complaints are deficient.
11 Because it is a waste of court resources to have to consider multiple complaints alleging the same
12 thing, Mr. Moye must limit his allegations *in this action* to acts and omissions that occurred at Napa
13 State Hospital. In short, he can assert claims in this action only about the allegedly improper
14 transfer to Napa State Hospital and the allegedly improper administration of drugs at Napa State
15 Hospital. No other claims should be alleged in the amended complaint.

16 **IV. CONCLUSION**

17 The complaint fails to state a claim upon which relief may be granted. Leave to amend is
18 granted so that Mr. Moye may file an amended complaint to attempt to state a claim against
19 defendants. For each instance of a constitutional violation, Mr. Moye should name each person who
20 violated his constitutional right(s), describe what each person did or failed to do that caused a
21 violation of his constitutional right(s), state where the violation occurred, and state when the

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1 violation occurred. The amended complaint must be filed no later than **September 5, 2014**, and
2 must include the caption and civil case number used in this order and the words AMENDED
3 COMPLAINT on the first page. Failure to file the amended complaint by the deadline will result in
4 the dismissal of the action.

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6 IT IS SO ORDERED.

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8 Dated: July 29, 2014

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12 EDWARD M. CHEN
13 United States District Judge
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