

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 STEIN COLE,
5 Plaintiff,
6 v.
7 R. MCFADDEN-JENSEN, et al.,
8 Defendants.

Case No. [20-cv-06400-WHO](#) (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

9 **INTRODUCTION**

10 Plaintiff Stein Cole's 42 U.S.C. § 1983 complaint is DISMISSED with leave to file
11 an amended complaint on or before **March 29, 2021**. His allegations contain unrelated
12 and factually insufficient claims against more than thirty defendants at three different
13 prisons, one of which is outside this district. This is improper. Fed. R. Civ. P. 20(a)(2). In
14 the amended complaint, Cole must decide which of his claims to pursue, as discussed
15 below. Failure to file a proper amended complaint by the deadline, or a failure to comply
16 in every respect with the instructions given in this order, likely will result in the dismissal
17 of this suit and the entry of judgment in favor of defendants.

18 **DISCUSSION**

19 **A. Standard of Review**

20 A federal court must conduct a preliminary screening in any case in which a
21 prisoner seeks redress from a governmental entity or officer or employee of a
22 governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any
23 cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim
24 upon which relief may be granted or seek monetary relief from a defendant who is immune
25 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must be liberally construed.
26 *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

27 A "complaint must contain sufficient factual matter, accepted as true, to 'state a
28 claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

1 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
2 plausibility when the plaintiff pleads factual content that allows the court to draw the
3 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
4 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
5 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
6 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55
7 (9th Cir. 1994).

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

12 **B. Legal Claims**

13 Cole raises claims against more than thirty defendants who are employed at three
14 different prisons--Mule Creek State Prison, CTF-Soledad, and Salinas Valley State Prison.
15 He raises claims under (i) the First Amendment and Religious Land Use and
16 Institutionalized Persons Act for religious discrimination and retaliation; (ii) the
17 Rehabilitation Act; (iii) the Americans With Disabilities Act, (iv) the Fourteenth
18 Amendment; and (v) the Eighth Amendment.

19 Many of the alleged incidents occurred at Mule Creek State Prison, which is not in
20 the Northern District. Accordingly, all Mule Creek defendants and claims are
21 DISMISSED without prejudice to Cole filing suit against these defendants in the Eastern
22 District of California, where Mule Creek is located.

23 Many of Cole’s remaining claims are based on unrelated incidents occurring at
24 different prisons (CTF-Soledad and Salinas Valley) by different persons. This is improper.
25 He may not bring unrelated claims in one suit. Federal pleading rules require that claims
26 be based on “the same transaction, occurrence, or series of transactions or occurrences”
27 and pose a “question of law or fact common to all defendants.” Fed. R. Civ. P. 20(a)(2).
28 In his amended complaint, he must decide which claim he wishes to pursue. He may then

1 allege facts that give rise to that claim and any other claim that is closely related to the
2 facts involved, as required by Rule 20(a)(2). As should be clear from that instruction, in
3 the amended complaint Cole must choose to bring his claim(s) against either (i) the CTF-
4 Soledad defendants or (ii) the Salinas Valley defendants.

5 His religious exercise claims are deficient for a separate reason. He has not
6 described what religion he follows, or exactly how his exercise of this religion has been
7 inhibited. It fails to state a claim on which relief could be granted.

8 For those reasons, Cole's Complaint is DISMISSED with leave to amend. I
9 DISMISS without leave to amend his claims for injunctive relief against defendants at
10 CTF-Soledad and Salinas Valley. Because plaintiff is now housed at Mule Creek,
11 injunctive relief claims at the other two prisons are moot.

12 **CONCLUSION**

13 The complaint is DISMISSED with leave to file an amended complaint in
14 accordance with the discussion above on or before March 29, 2021. The amended
15 complaint must include the caption and civil case number used in this order (20-06400
16 WHO (PR)) and the words FIRST AMENDED COMPLAINT on the first page. The
17 amended complaint must also appear on this Court's form. Because an amended
18 complaint completely replaces the previous complaints, plaintiff must include in his first
19 amended complaint all the claims he wishes to present and all of the defendants he wishes
20 to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not
21 incorporate material from the prior complaints by reference.

22 Failure to file an amended complaint in accordance with this order likely will result
23 in dismissal of this action under Federal Rule of Civil Procedure 41(b) for failure to
24 prosecute.

25 **IT IS SO ORDERED.**

26 **Dated:** February 18, 2021

27 

28 WILLIAM H. ORRICK
United States District Judge