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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THERON N. LYNCH,
Plaintiff,

No. C 08-5206 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

NAPA STATE HOSPITAL; LINDA
CLARK; JEFF (last name unknown);
VIRGINIA CRUZ; KEVIN GOOSBY; and
DIRECTOR OF NAPA STATE
HOSPITAL,
Defendants.

Plaintiff, a former patient at Napa State Hospital, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has paid the filing fee.

Venue is proper in this district because a substantial part of the events giving rise to the action occurred in this district. See 28 U.S.C. § 1391(b).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 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 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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United States District Court
For the Northern District of California

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

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

16 **B. Legal Claims**

17 Plaintiff contends that the defendant hospital director failed to protect him from
18 various violations of his rights. A supervisor generally "is only liable for constitutional
19 violations of his subordinates if the supervisor participated in or directed the violations, or
20 knew of the violations and failed to act to prevent them." *Taylor v. List*, 880 F.2d 1040,
21 1045 (9th Cir. 1989). There is no allegation here that the director himself or herself actually
22 committed the violations, only that the director did not prevent them. This claim will be
23 dismissed with leave to amend.

24 Plaintiff contends that defendant Linda Clark, a recreational therapist, repeatedly
25 declined to allow him to attend a dance class because he is black. This is sufficient to state
26 a claim.

27 Plaintiff contends that a staff member named Jeff, whose last name he does not
28 know, frisked him repeatedly and did not do the same to others. He provides no indication

1 of when this was, and although he does refer to his having physical and mental
2 impairments, he does not claim that the searches were because of them, or were for some
3 other impermissible reason. This claim will be dismissed with leave to amend.

4 Plaintiff contends that Virginia Cruz, supervisor of his living unit, did not provide him
5 with hot meals after sundown during Ramadan for three days as punishment for his being a
6 Muslim. This is sufficient to state a claim.

7 Lastly, plaintiff contends that defendant Kevin Goosby used excessive force against
8 him by twisting a television remote control out of plaintiff's hand, almost pulling him out of
9 his seat. Plaintiff does not say in the complaint why he was at Napa State Hospital, which
10 makes it impossible to be sure what legal rules apply to his excessive force claim, but given
11 the function of that institution and the fact that plaintiff now is in state prison, it may be that
12 he was there for restoration of competency, that is, was a pretrial detainee. If so,
13 the Due Process Clause of the Fourteenth Amendment would protect him from the use of
14 force that amounts to punishment. *See Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989)
15 (citing *Bell v. Wolfish*, 441 U.S. 520, 535-39 (1979)). If that is the applicable standard, he
16 has not stated a claim, as the facts he alleges are that Goosby twisted his hand in an effort
17 to get the remote control, not to punish him. This claim will be dismissed with leave to
18 amend to say why plaintiff was at the hospital (which would affect the analysis) and any
19 facts that would show that the incident amounted to use of excessive force.

20 CONCLUSION

21 1. For the foregoing reasons, the case is **DISMISSED** with leave to amend, as
22 indicated above, within thirty days from the date of this order. The amended complaint
23 must include the caption and civil case number used in this order and the words
24 AMENDED COMPLAINT on the first page. Because an amended complaint completely
25 replaces the original complaint, plaintiff must include in it all the claims he wishes to
26 present, including those identified above as sufficient to proceed. *See Ferdik v. Bonzelet*,
27 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original
28 complaint by reference. Failure to amend within the designated time will result in the

1 dismissal of these claims.

2 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
3 court informed of any change of address by filing a separate paper with the clerk headed
4 "Notice of Change of Address," and must comply with the court's orders in a timely fashion.
5 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to
6 Federal Rule of Civil Procedure 41(b).

7 **IT IS SO ORDERED.**

8 Dated: January 5, 2009.



PHYLLIS J. HAMILTON
United States District Judge

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