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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LORAN MICHA ALEXANDRE, aka
MICHAEL ALEXANDRE,

Plaintiff,

No. C 09-05778 PJH (PR)

v.

ORDER OF DISMISSAL

ARNOLD SCHWARZENEGGER,
Governor of the State of California;
JAMES TILTON, Secretary, California
Department of Corrections; DENNIS
KENNEALLY, Director of Parole; JOHN
DOVEY, Director, Adult Institutions;
RICK REMMER, Assistant Secretary,
Correctional Safety; ARNOLD
BURRUEL, Secretary, Civil Rights;
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
REHABILITATION; and DOES 1 thru
100,

Defendants.

_____ /
This is a civil rights case brought pro se by a person who formerly was a prisoner in the California prison system. It was filed in the United States District Court for the Northern District of Texas. Defendants Schwarzenegger, Tilton, and California Department of Corrections and Rehabilitation moved to dismiss the complaint on various grounds, including improper venue. The Texas court granted the motion to the extent of transferring the case here.

Plaintiff contended in the original complaint, and continues to claim in the amended complaint reviewed here, that when she was in the California prison system in 1992 through 2002 she was housed in the general population of male prisons despite being

United States District Court
For the Northern District of California

1 “anatomically female.” She asserts that as a result she was attacked by other prisoners.

2 Plaintiff’s motion to proceed in forma pauperis had been granted by the Texas court.

3 This court conducted an initial review of the case pursuant to section 1915(e)(2) of Title 28
4 of the United States Code, which provides that an action filed in forma pauperis must be
5 dismissed if (1) plaintiff’s allegation of poverty is untrue; (2) the complaint is frivolous or
6 malicious; (3) the plaintiff has failed to state a claim upon which relief may be granted; or
7 (4) the plaintiff seeks monetary relief from a defendant who is immune from such relief.

8 The court dismissed the claims against the California Department of Corrections and
9 Rehabilitation, Parole and Community Services Division (“CDCR”), because state agencies
10 cannot be sued in federal court. See *Brown v. Cal. Dep’t of Corrs.*, 554 F.3d 747, 752 (9th
11 Cir. 2009) (California Department of Corrections and California Board of Prison Terms
12 entitled to Eleventh Amendment immunity). As to the other defendants, the court wrote:

13 The other defendants are the current governor of California, the head
14 of the CDCR, and four heads of divisions of the CDCR. The complaint
15 contains no specific factual allegations as to what each of those individual
16 defendants actually did that plaintiff contends violated her federal rights.¹
17 Because there is no respondeat superior liability for section 1983 claims, the
18 absence of any such allegations means that plaintiff has not stated a claim
19 against any of them. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
(under no circumstances is there liability under section 1983 solely because
20 defendant is the superior of someone who violated plaintiff’s rights
21 (respondeat superior liability)). The remaining claims will be dismissed with
22 leave to amend to allege facts that would state a plausible claim against these
23 defendants, if plaintiff can do so in good faith.

24 Plaintiff has filed an amended complaint, which now will be reviewed under 28
25 U.S.C. § 1915(e)(2) to determine if plaintiff has stated a claim.

26 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of
27 the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;
28 the statement need only "give the defendant fair notice of what the . . . claim is and the

26 ¹ The latest date mentioned in the complaint is in 2001. Schwarzenegger did not
27 become governor of California until 2003, so it seems unlikely that he had any role in the
28 purported mistreatment of plaintiff. This may also be true of the other named defendants – that
is, they may not have held their offices at the time of the events giving rise to the complaint.
[Footnote in original.]

1 grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations
2 omitted). Although in order to state a claim a complaint "does not need detailed factual
3 allegations, . . . a plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief'
4 requires more than labels and conclusions, and a formulaic recitation of the elements of a
5 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
6 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65
7 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim for relief
8 that is plausible on its face." *Id.* at 1974. The United States Supreme Court has recently
9 explained the "plausible on its face" standard of *Twombly*: "While legal conclusions can
10 provide the framework of a complaint, they must be supported by factual allegations. When
11 there are well-pleaded factual allegations, a court should assume their veracity and then
12 determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129
13 S.Ct. 1937, 1950 (2009). However, complaints in pro se prisoner cases, such as this one,
14 must be liberally construed in favor of the plaintiff when applying the *Twombly/Iqbal*
15 pleading standard. *Hebbe v. Miller*, 602 F.3d 12020, 1205 (9th Cir. 2010).

16 In the order dismissing the original complaint with leave to amend, plaintiff was
17 warned that the amended complaint would completely replace the original one. In the
18 amended complaint she has deleted all the names of defendants, listing as defendants only
19 "Governor of California, Director of the California Department of Correction, Parole and
20 Community Services Division, and Does 1 thru 100." Thus Schwarzenegger, Tilton,
21 Kenneally, Dovey, Remmer, and Burruel are no longer defendants in the case. *See Ferdik*
22 *v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992) (defendants not named in amended
23 complaint no longer defendants). This moots their motion to dismiss.

24 In the body of the complaint, plaintiff alleges no facts whatever about either the
25 current governor and director of corrections or the people who were governor and director
26 at the time her claims arose, 1994-2002. Her allegations are mostly of the pattern
27 "defendants caused thus and so to happen," for instance that "defendants" – unnamed –
28 endangered her by "putting her" in the general population at San Quentin State Prison."

1 Such allegations are conclusory, and do not provide a plausible allegation that the governor
2 or the director of corrections did those things. Plaintiff was warned in the order dismissing
3 the previous complaint with leave to amend that she was required to provide "specific
4 factual allegations as to what each of those individual defendants actually did that plaintiff
5 contends violated her federal rights," and that respondeat superior does not apply to
6 section 1983 claims such as these. Despite these warnings, in the amended complaint she
7 has not stated a federal claim against anyone.

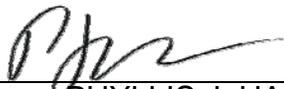
8 **CONCLUSION**

9 The federal claims are **DISMISSED** with prejudice. Because the court has
10 dismissed all claims over which it has original jurisdiction, any state law claims plaintiff may
11 have intended to make are **DISMISSED** without prejudice to bringing them in state court.
12 See 28 U.S.C. § 1367(c)(3). Plaintiff's motion for summary judgment (docket number 43 on
13 the docket), her motion for a hearing on the motion (document 44), and the former
14 defendants' motion to dismiss (document 34) are **DENIED** as moot.

15 The clerk shall close the file.

16 **IT IS SO ORDERED.**

17 Dated: September 12, 2011.



PHYLLIS J. HAMILTON
United States District Judge