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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JUAN CARLOS LEMUS,
Plaintiff,

No. C 11-1099 PJH (PR)

vs.

**ORDER DISMISSING
AMENDED COMPLAINT
WITH LEAVE TO AMEND**

CORRECTIONAL TRAINING FACILITY
EMPLOYEES; DR. E. SULLIVAN, DR. J.
LEE, RN A. COLEMAN, CMO D.
JACOBSEN, B. DIXON, JANE DOES
AND JOHN DOES (1-20), and
DIRECTOR M. CATE (CDCR),
Defendants.

Plaintiff, an inmate at the Correctional Training Facility, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The original complaint was dismissed with leave to amend and plaintiff has filed an amended complaint.

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).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary;

1 the statement need only "give the defendant fair notice of what the . . . claim is and the
2 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations
3 omitted). Although in order to state a claim a complaint "does not need detailed factual
4 allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
5 requires more than labels and conclusions, and a formulaic recitation of the elements of a
6 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
7 above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
8 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
9 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
10 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
11 framework of a complaint, they must be supported by factual allegations. When there are
12 well-pleaded factual allegations, a court should assume their veracity and then determine
13 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct.
14 1937, 1950 (2009).

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

19 **B. Legal Claims**


20 In the original complaint, plaintiff asserted that he suffered from Coccidioidomycosis,
21 apparently the disease that is commonly called "Valley Fever." He stated that he had not
22 received proper medical care for it, but his allegations were conclusory and were against
23 "defendants," rather than specific named defendants. For instance, he stated that "From
24 September 2009 to March 2010, defendants have repeatedly denied, delayed, medical tests
25 and providing medical treatment for plaintiff's Cocci infection [and] failed to provide plaintiff
26 with necessary and pain and infections medications" Plaintiff was informed that this
27 was insufficient to meet the *Iqbal* standard. He must provide more specific factual
28 allegations as to what each individual defendant actually did, identified as closely as

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

IT IS SO ORDERED.

Dated: January 23, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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