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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 HANS REISER,

No. C 11-4735 SBA (PR)

9 Plaintiff,

**ORDER RE VARIOUS PENDING
MOTIONS**

10 v.

Docket Nos. 29, 30, 32, 33 and 34

11 WILLIAM H. DU BOIS, et al.,

12 Defendants.
13 _____/

14 **I. BACKGROUND**

15 This is a pro se civil rights action filed by Plaintiff Hans Reiser, in inmate currently
16 incarcerated at Pleasant Valley State Prison. On September 28, 2012, the Court dismissed
17 Plaintiff's complaint with leave to amend. (Dkt. 24). The Court indicated that it was not
18 possible from Plaintiff's numerous filings to discern the basis of his claims that give rise to
19 this action. Id.

20 On November 8, 2012, the Court, at Plaintiff's request, granted him an additional
21 sixty days to file an amended complaint. (Dkt. 28). Thus, Plaintiff's amended complaint was
22 due by January 7, 2013.

23 On November 15, 2012, Plaintiff filed a "Motion for Patience by Court While I
24 Overcome CDCR Slowdragging Copier," which appears to seek an extension of time of
25 unspecified duration to file his amended complaint. (Dkt. 29).

26 On November 21, 2012, Plaintiff filed a "Motion for Acceptance of First Amended
27 Complaint and Time to Amend and Exercise of Doctrine of Pendant Jurisdiction While I
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1 Work to Amend.” (Dkt. 30). At the same time, Plaintiff submitted his proposed First
2 Amended Complaint, which has been received, but not filed by the Court.

3 On January 10, 2013, Plaintiff filed an “Ex Parte Motion for Additional Time to
4 Amend Complaint.” (Dkt. 32).

5 On January 18, 2013, Plaintiff filed two further motions titled, “Ex Parte Motion for
6 Additional Time to Amend Complaint and For Acceptance of Amended Complaint 1/15/13,”
7 (Dkt. 33), and “Motion For Acceptance of First Amended Complaint and Time to Amend
8 and Exercise of Doctrine of Pendent Jurisdiction While I Work to Amend,” (Dkt. 34). On
9 the same date, Plaintiff submitted a document titled, “First Amended Complaint and Habeas
10 Corpus Joined Consistent With Heck v. Humphrey Dicta.” This document, which appears to
11 be Plaintiff’s second First Amended Complaint, has been received, but not filed by the Court.
12 (Dkt. 35).

13 **II. DISCUSSION**

14 **A. Motions for Acceptance of First Amended Complaint**

15 Plaintiff’s motion filed on November 21, 2012, requests that the Court accept the
16 amended complaint lodged on that date. In his subsequent motions, however, Plaintiff now
17 requests that the Court accept his amended complaint submitted on January 18, 2013, as the
18 operative pleading. As such, the November 21, 2012 motion for acceptance of the complaint
19 (Dkt. 30) is DENIED AS MOOT. The First Amended Complaint lodged on November 21,
20 2012 shall be returned to Plaintiff.

21 For the reasons set forth below, the January 18, 2013 motions to accept the amended
22 complaint are DENIED on the grounds that the pleading submitted on January 18, 2013 is
23 unacceptable and in violation of the Federal Rules of Civil Procedure. The Court will,
24 however, GRANT Plaintiff an extension of time to file an amended pleading that cures these
25 deficiencies, as discussed below.

26 Federal Rule of Civil Procedure 8(a)(2) governs pleadings in federal court and
27 requires “a short and plain statement of the claim showing that the pleader is entitled to
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1 relief.” Rule 8(d)(1) further requires each allegation to be “simple, concise, and direct.” To
2 comport with Rule 8, “[s]pecific facts are not necessary; the statement need only give the
3 defendant fair notice of what the . . . claim is and the grounds upon which it rests.”
4 Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citations omitted). Where the allegations in a
5 complaint are “argumentative, prolix, replete with redundancy and largely irrelevant,” the
6 complaint fails to comply with Rule 8(a). McHenry v. Renne, 84 F.3d 1172, 1177, 1178-79
7 (9th Cir. 1996) (“Prolix, confusing complaints ... impose unfair burdens on litigants and
8 judges.”); see also Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673-74 (9th Cir. 1981)
9 (affirming dismissal of complaint that was ““verbose, confusing and almost entirely
10 conclusory”).

11 Plaintiff’s First Amended Complaint (Dkt. 35), including attachments, consists of
12 hundreds of pages. Plaintiff names over fifty Defendants, most of whom do not appear to be
13 mentioned in the complaint.¹ In addition, Plaintiff includes filings from state court cases and
14 requests that this Court take pendant jurisdiction over them. Plaintiff’s proposed First
15 Amended Complaint contains allegations that are prolix, redundant and irrelevant, in direct
16 contravention to Rule 8(a) and McHenry. As discussed above, a complaint requires only a
17 short and plain statement of the claim that provides each defendant fair notice of what the
18 claim is and the grounds upon which it rests—and such allegations must be “simple, concise
19 and direct.” Fed. R. Civ. P. 8(a)(2) and (d)(1). Given Plaintiff’s failure to comply with these

21 ¹ Many of the named Defendants are judges, who are absolutely immune for acts taken
22 in their judicial capacity. See Pierson v. Ray, 386 U.S. 547, 553-55 (1967). Other Defendants
23 appear to be private individuals or entities, who generally are considered private actors who are
24 not subject to liability under 42 U.S.C. § 1983. See Simmons v. Sacramento County Superior
25 Court, 318 F.3d 1156, 1161 (9th Cir. 2003) (attorneys are private actors); Van Ort v. Estate of
26 Stanewich, 92 F.3d 831, 835 (9th Cir. 1996) (private individuals engaged in private activities
27 are not subject to suit under § 1983). It also appears that Plaintiff is attempting to file a petition
28 for a writ of habeas corpus in the same document as his civil rights complaint. Plaintiff may not
do so. If Plaintiff wishes to file a petition for a writ of habeas corpus he must file it separately.
See Docken v. Chase, 393 F.3d 1024, 1027 (9th Cir. 2004) (challenges to prison conditions have
traditionally been cognizable only in civil rights complaints under § 1983, and challenges
implicating the fact or duration of confinement must be brought through a habeas petition under
28 U.S.C. § 2254).

1 straightforward pleading requirements, the Court will not permit the filing of Plaintiff's
2 proposed First Amended Complaint and will order it returned to Plaintiff. See McHenry, 84
3 F.3d at 1177-78 (affirming Rule 8 dismissal of complaint that was "argumentative, prolix,
4 replete with redundancy, and largely irrelevant").

5 The Court will provide Plaintiff with additional time to prepare a proper First
6 Amended Complaint that is consistent with federal pleading standards. Plaintiff is advised
7 that for each claim, he must, to the best of his ability, specifically identify each defendant,
8 and specify what constitutional right he believes each Defendant has violated. Importantly,
9 Plaintiff must allege facts regarding the conduct of each Defendant that he asserts gives rise
10 to that Defendant's liability. A person deprives another of a constitutional right within the
11 meaning of 42 U.S.C. §1983 if he does an affirmative act, participates in another's
12 affirmative act or omits to perform an act which he is legally required to do, that causes the
13 deprivation of which the plaintiff complains. Leer v. Murphy, 844 F.2d 628, 633 (9th Cir.
14 1988). There can be no liability under § 1983 unless there is some affirmative link or
15 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423
16 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
17 F.2d 740, 743 (9th Cir.1978). Plaintiff is again reminded that his claims must be set forth in
18 short and plain terms, simply, concisely and directly.²

19 **C. Motion for Patience and Ex Parte Motions for Extension of Time**

20 Plaintiff has submitted two ex parte applications for additional time to file an amended
21 complaint. (Dkt. 32 and 33). Prior to submitting such applications, Plaintiff filed a motion
22 for patience in which he complains that he has had difficulty copying papers while
23 incarcerated, and as such requests that the Court refrain from dismissing his case at this
24 juncture. (Dkt. 29). The Court liberally construes Plaintiff's motion for patience as a request

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26 ² Plaintiff's apparent request that the Court take pendent jurisdiction over pending state
27 court actions is improper. If Plaintiff is a defendant in a state court action, he may seek to
28 remove it to federal court, provided that it could have been brought in federal court in the first
instance. 28 U.S.C. § 1441(a). Plaintiff cannot remove a state court action in which he is the
plaintiff.

1 for an extension of time. To rectify the deficiencies in Plaintiff's proposed First Amended
2 Complaint lodged with the Court on January 18, 2013, the Court hereby GRANTS Plaintiff's
3 requests for an extension of time, as set forth below.

4 **III. CONCLUSION**

5 For the reasons stated above,

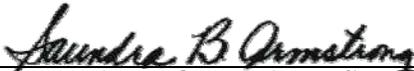
6 IT IS HEREBY ORDERED THAT:

- 7 1. Plaintiff's "Motion for Acceptance of First Amended Complaint and Time to
8 Amend and Exercise of Doctrine of Pendant Jurisdiction While I Work to
9 Amend" (Dkt. 30) is DENIED AS MOOT.
- 10 2. Plaintiff's "Motion for Acceptance of Amended Complaint 1/15/13" (Dkt. 33)
11 is DENIED and Plaintiff's "Motion For Acceptance of First Amended
12 Complaint and Time to Amend and Exercise of Doctrine of Pendent
13 Jurisdiction While I Work to Amend" (Dkt. 34) are DENIED. The Court will
14 not accept the pleading (Dkt. 35) lodged with the Court on January 18, 2013.
- 15 3. Plaintiff's motion for patience (Dkt. 29) and ex parte requests for an extension
16 of time to file an amended complaint (Dkt. 30, 32) are GRANTED.
- 17 4. Plaintiff shall file a First Amended Complaint, which rectifies the deficiencies
18 discussed above, **no later than 30 days after the date this Order is filed.**
19 The failure to do so will result in the dismissal of the action under Federal Rule
20 of Civil Procedure 41(b) for failure to prosecute. **Plaintiff's First Amended**
21 **Complaint shall not exceed 40 pages in length.**
- 22 5. The Clerk shall return the proposed amended complaints lodged with the Court
23 on or about November 21, 2012 and January 18, 2013 (Dkt. 35).
- 24 6. This Order terminates Docket 29, 30, 32, 33 and 34.

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IT IS SO ORDERED.

DATED: 1/28/13


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 HANS REISER,

5 Plaintiff,

6 v.

7 WILLIAM H DU BOIS et al,

8 Defendant.

Case Number: CV11-04735 SBA

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on January 28, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Hans Reiser G31008
16 Pleasant Valley State Prison
17 P.O. Box 8500
18 Coalinga, CA 93210

19 Dated: January 28, 2013

20 Richard W. Wieking, Clerk
21 By: Lisa Clark, Deputy Clerk