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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CHARLES SILAS,

Plaintiff,

No. C 12-3019 PJH (PR)

vs.

CHAPPELL,

Defendant.

**ORDER DISMISSING
COMPLAINT WITH LEAVE
TO AMEND**

United States District Court
For the Northern District of California

BACKGROUND

Plaintiff, a prisoner at San Quentin State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

SCREENING

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; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations

1 omitted). Although in order to state a claim a complaint “does not need detailed factual
2 allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
3 requires more than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief
5 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
6 (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is
7 plausible on its face.” *Id.* at 570. The United States Supreme Court has explained the
8 “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the
9 framework of a complaint, they must be supported by factual allegations. When there are
10 well-pleaded factual allegations, a court should assume their veracity and then determine
11 whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662,
12 679 (2009). Complaints in pro se prisoner cases such as this one must be liberally
13 construed in favor of the plaintiff when applying the *Twombly/Iqbal* pleading standard.
14 *Hebbe v. Pliier*, 627 F.3d 338, 341-42 (9th Cir. 2010).

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 Plaintiff states that he has Hepatitis C and bilateral cervical neural foraminal
21 stenosis. Plaintiff states that Watson, a doctor at his prison denied him the proper
22 medication and another defendant, Tottell, violated plaintiff’s Eighth Amendment rights.
23 Plaintiff provides no more information.

24 These allegations are insufficient to meet the *Iqbal* standard. Plaintiff must provide
25 specific factual allegations as to what each individual defendant actually did, identified as
26 closely as possible by time and location, sufficient to make it plausible that he has a claim
27 for relief against each defendant. Plaintiff must describe how the individual defendants’
28 actions caused him harm and he must specifically describe that harm. Simply stating that

1 unidentified medication was denied or that another defendant violated his rights is
2 insufficient. Plaintiff fails to describe what the medications was for and why it was required.
3 The complaint will be dismissed with leave to amend.¹


4 **CONCLUSION**

5 1. The complaint is **DISMISSED** with leave to amend, as indicated above, within
6 thirty days from the date of this order. The amended complaint must include the caption
7 and civil case number used in this order and the words AMENDED COMPLAINT on the
8 first page. Because an amended complaint completely replaces the original complaint,
9 plaintiff must include in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963
10 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original
11 complaint by reference. Failure to amend within the designated time will result in the
12 dismissal of the complaint.

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

18 **IT IS SO ORDERED.**

19 Dated: November 13, 2012.



PHYLLIS J. HAMILTON
United States District Judge

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27 _____
28 ¹To the extent plaintiff raises additional allegations that occurred at another facility in
Susanville, CA, plaintiff must file a complaint in the Eastern District of California where that
facility is located.