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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

MICHAEL HOLLINS,

Plaintiff,

No. C 13-5035 PJH (PR)

vs.

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

GREG MUNKS, et. al.,

Defendants.

Plaintiff, a pretrial detainee incarcerated at Maguire Correctional Facility has filed a pro se civil rights complaint under 42 U.S.C. § 1983.¹ He has been granted leave to proceed in forma pauperis.

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; the statement need only "give the defendant fair notice of what the . . . claim is and the

¹ Plaintiff has filed twelve other cases in this court in the last two months, several with overlapping claims.

1 grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (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*, 550 U.S. 544, 555 (2007)
7 (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is
8 plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained
9 the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the
10 framework of a complaint, they must be supported by factual allegations. When there are
11 well-pleaded factual allegations, a court should assume their veracity and then determine
12 whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662,
13 679 (2009).

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

18 **B. Legal Claims**

19 Plaintiff states that he is Muslim and has been denied the appropriate meal plan.

20 Inmates "have the right to be provided with food sufficient to sustain them in good
21 health that satisfies the dietary laws of their religion." *McElyea v. Babbitt*, 833 F.2d 196,
22 198 (9th Cir. 1987). Allegations that prison officials refuse to provide a healthy diet
23 conforming to sincere religious beliefs states a cognizable claim under § 1983 of denial of
24 the right to exercise religious practices and beliefs. See *Ward v. Walsh*, 1 F.3d 873, 877
25 (9th Cir. 1993) (Jewish inmate claiming denial of kosher diet), cert. denied, 510 U.S. 1192
26 (1994); *McElyea*, 833 F.2d at 198 (same); *Moorish Science Temple, Inc. v. Smith*, 693 F.2d
27 987, 990 (2d Cir. 1982) (Muslim inmate claiming denial of proper religious diet).

28 It appears that plaintiff was provided the proper Halal/Kosher meal plan but was then

1 changed to the vegetarian diet. Plaintiff states that he was removed from the meal plan
2 after filing grievances regarding his food being prepared by other inmates. However,
3 plaintiff has failed to identify any specific defendants in the complaint. The complaint will be
4 dismissed with leave to amend to identify the defendants and how their actions violated his
5 constitutional rights. Plaintiff should also describe how his current meal plan violates his
6 religious beliefs.

7 Plaintiff has also requested the appointment of counsel. There is no constitutional
8 right to counsel in a civil case, *Lassiter v. Dep't of Social Services*, 452 U.S. 18, 25 (1981),
9 and although district courts may "request" that counsel represent a litigant who is
10 proceeding in forma pauperis, as plaintiff is here, see 28 U.S.C. § 1915(e)(1), that does not
11 give the courts the power to make "coercive appointments of counsel." *Mallard v. United*
12 *States Dist. Court*, 490 U.S. 296, 310 (1989).

13 The Ninth Circuit has held that a district court may ask counsel to represent an
14 indigent litigant only in "exceptional circumstances," the determination of which requires an
15 evaluation of both (1) the likelihood of success on the merits and (2) the ability of the
16 plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.
17 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Plaintiff appears able to present his
18 claims adequately, and the issues are not complex. Therefore, the motion to appoint
19 counsel will be denied.

20 CONCLUSION

21 1. The complaint is **DISMISSED** with leave to amend in accordance with the
22 standards set forth above. The amended complaint must be filed no later than **February**
23 **18, 2013**, and must include the caption and civil case number used in this order and the
24 words AMENDED COMPLAINT on the first page. Because an amended complaint
25 completely replaces the original complaint, plaintiff must include in it all the claims he
26 wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may
27 not incorporate material from the original complaint by reference.

28 2. The motion to appoint counsel (Docket No. 9) is **DENIED**.

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3. 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 14, 2014.



PHYLLIS J. HAMILTON
United States District Judge

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