

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAVIN MAURICE RHODES,
Plaintiff,
v.
SAM OHTA, et al.,
Defendants.

Case No. [16-cv-06805-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Re: Dkt. Nos. 10, 13, 14

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The first amended complaint was dismissed with leave to amend and plaintiff has filed a second amended complaint (Docket No. 15).

DISCUSSION

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)

1 (citations omitted). Although in order to state a claim a complaint “does not need detailed
2 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]
3 to relief' requires more than labels and conclusions, and a formulaic recitation of the
4 elements of a cause of action will not do. . . . Factual allegations must be enough to
5 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550
6 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state
7 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme
8 Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal
9 conclusions can provide the framework of a complaint, they must be supported by factual
10 allegations. When there are well-pleaded factual allegations, a court should assume their
11 veracity and then determine whether they plausibly give rise to an entitlement to relief.”
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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

17 **LEGAL CLAIMS**

18 Plaintiff presents many allegations of mistreatment and violations of his rights by
19 correctional officers, prison officials and attorneys at two prisons over the course of
20 several years

21 Pursuant to Fed. R. Civ. P. 8(a)(2), a plaintiff must provide “a short and plain
22 statement of the claim showing that the pleader is entitled to relief....” Rule 8 requires
23 “sufficient allegations to put defendants fairly on notice of the claims against them.”
24 *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir.1991)). *Accord Richmond v. Nationwide*
25 *Cassel L.P.*, 52 F.3d 640, 645 (7th Cir.1995) (amended complaint with vague and scanty
26 allegations fails to satisfy the notice requirement of Rule 8.) “The propriety of dismissal
27 for failure to comply with Rule 8 does not depend on whether the complaint is wholly
28 without merit,” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.1996).

1 Moreover, “[M]ultiple claims against a single party are fine, but Claim A against
2 Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” *George*
3 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different
4 defendants belong in different suits,” not only to prevent the sort of “morass” that a multi-
5 claim, multi-defendant suit can produce, “but also to ensure that prisoners pay the
6 required filing fees – for the Prison Litigation Reform Act limits to 3 the number of
7 frivolous suits or appeals that any prisoner may file without prepayment of required fees.”
8 *Id.* (citing 28 U.S.C. § 1915(g)).

9 The second amended complaint is 47 hand written pages and names
10 approximately 59 defendants. Plaintiff presents allegations concerning events at two
11 different prisons over the course of several years. He also names as defendants several
12 attorneys, including two deputy attorney generals who litigated his previous cases and a
13 superior court judge. Plaintiff alleges that all defendants are engaged in a multi-district
14 racketeering conspiracy to retaliate against plaintiff for the filing of a prior federal civil
15 rights lawsuit. He also raises many other claims and violations of the Racketeer
16 Influenced and Corrupt Organizations (“RICO”) Act.

17 The majority of plaintiff’s allegations concern conduct that occurred at Kern Valley
18 State Prison, which lies in the Eastern District of California. Plaintiff presents allegations
19 that occurred between February 1, 2014 and August 30, 2016 at Kern Valley State Prison
20 that were committed by more than 30 defendants who were employed at that facility. He
21 also alleges that several attorneys and a judge retaliated against plaintiff while he
22 pursued a prior federal action. Plaintiff’s complaint also contains allegations against
23 approximately 14 defendants who were employed at Pelican Bay State Prison (“PBSP”),
24 which is in this district. Plaintiff alleges that the PBSP defendants violated his rights after
25 he was transferred to that facility on August 30, 2016.

26 Plaintiff’s complaint in this action illustrates the “unfair burdens” imposed by
27 complaints, “prolix in evidentiary detail, yet without simplicity, conciseness and clarity”
28 which “fail to perform the essential functions of a complaint.” *McHenry*, 84 F.3d at 1179-

1 80. Plaintiff has also presented many unrelated claims. The amended complaint was
2 dismissed with leave to amend to focus on the events that occurred at PBSP. Plaintiff
3 was informed that the allegations that occurred during plaintiff's incarceration at Kern
4 Valley State Prison and elsewhere were dismissed from this action without prejudice.
5 Plaintiff could file a case or cases concerning these events in the district or districts
6 where they occurred. Plaintiff was also informed that his RICO claim was dismissed from
7 this action and he should only discuss the claims against the PBSP defendants.

8 Plaintiff has not followed the court's instructions and has instead filed a second
9 amended complaint that is nearly identical to the amended complaint. The RICO claims
10 and claims against defendants in other districts are dismissed without leave to amend for
11 the same reasons as set forth before.

12 Plaintiff will be provided one final opportunity to present his claims against the
13 PBSP defendants. He may not include defendants and claims from the other districts
14 that have been dismissed without leave to amend. If he does include lengthy allegations
15 concerning these defendants and claims, then the entire action will be dismissed
16 regardless if there are cognizable claims against the PBSP defendants. *See McHenry* at
17 1179. Plaintiff is also informed that he must include all of the allegations in this case in
18 one filing and not in multiple motions and complaints. Plaintiff must also address if he
19 exhausted the claims regarding the PBSP defendants because he previously stated that
20 certain claims were not exhausted.

21 CONCLUSION

22 1. The motions to amend (Docket Nos. 10, 13, 14) are **GRANTED** and the court
23 has reviewed the second amended complaint.

24 2. The second amended complaint is **DISMISSED** with leave to amend in
25 accordance with the standards set forth above. The third amended complaint must be
26 filed no later than **July 5, 2017**, and must include the caption and civil case number used
27 in this order and the words THIRD AMENDED COMPLAINT on the first page. Because
28 an amended complaint completely replaces the original complaint, plaintiff must include

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to file an amended complaint may result in dismissal of this case.

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: June 5, 2017



PHYLLIS J. HAMILTON
United States District Judge

\\cand oak.cand.circ9.dcn\data\users\PJHALL_psp\2016\2016_06805_Rhodes_v_Ohta_(PSP)\16-cv-06805-PJH-dwlta3.docx

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 KAVIN MAURICE RHODES,
4 Plaintiff,
5 v.
6 SAM OHTA, et al.,
7 Defendants.
8

Case No. [16-cv-06805-PJH](#)

CERTIFICATE OF SERVICE

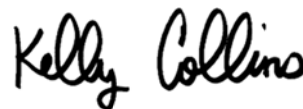
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on June 5, 2017, I SERVED a true and correct copy(ies) of the attached, by placing
13 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Kavin Maurice Rhodes ID: D-20245
18 Pelican Bay State Prison
19 P.O. Box 7500
20 Crescent City, CA 95532-7000

21 Dated: June 5, 2017

22
23 Susan Y. Soong
24 Clerk, United States District Court

25 

26 By: _____
27 Kelly Collins, Deputy Clerk to the
28 Honorable PHYLLIS J. HAMILTON