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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOHN COBB,  
  
Plaintiff,  
  
v.  
  
J. REYES, *et al.*,  
  
Defendants.

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Case No. 08cv188-JAH (WMC)  
  
**ORDER GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS AND DENYING  
PLAINTIFF'S MOTION FOR  
LEAVE TO FILE THIRD  
AMENDED COMPLAINT**  
  
[Doc. Nos.54, 56, 59, 72]

On December 18, 2008, this Court issued an order dismissing *pro se* plaintiff John Cobb's complaint for failure to comply with F.R.C.P. 8. Doc. 35. This Court issued another order on September 23, 2009 dismissing plaintiff's first amended complaint because it also failed to comply with Rule 8. Doc. 50. In that order this Court authorized plaintiff to file a second amended complaint but warned that if the complaint did not comply with Rule 8 it would be dismissed without further leave to amend. *Id.*

Plaintiff filed a second amended complaint ("SAC") on October 21, 2009. Three motions to dismiss were filed by various defendants on November 9, 2009, November 10, 2009, and November 23, 2009 on the ground that plaintiff's complaint still failed to comply with Rule 8, as well as other theories.

Under Rule 8(a) of the Federal Rules of Civil Procedure, a complaint "shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to

1 relief, and (3) a demand for judgment for the relief the pleader seeks.” Fed.R.Civ.P. 8(a).  
2 Similarly, Rule 8(d) requires that “each averment of a pleading shall be simple, concise and  
3 direct.” Rule 8 is designed to provide defendants with fair notice of the claims against  
4 them and the grounds on which those claims rest. McKeever v. Block, 932 F.2d 795, 798  
5 (9<sup>th</sup> Cir. 1991); see McHenry v. Renne, 84 F.3d 1172, 1177 (9<sup>th</sup> Cir. 1996).

6 “[T]hreadbare recitals of the elements of a cause of action, supported by mere  
7 conclusory statements, do not suffice. Ashcroft v. Iqbal 129 S. Ct 1937, 1949 (2009).  
8 While Rule 8 “does not require ‘detailed factual allegations,’ . . . it [does] demand [] more  
9 than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Id. (citing Bell  
10 Atlantic Corp v. Twombly, 550 U.S. 544,555 (2007). “The propriety of dismissal for  
11 failure to comply with Rule 8 does not depend on whether the complaint is wholly without  
12 merit . . . Rule 8(e), requiring each averment of a pleading to be ‘simple, concise, and  
13 direct,’ applies to good claims as well as bad, and is a basis for dismissal independent of  
14 Rule 12(b)(6).” McHenry, 84 F.3d at 1179.

15 Plaintiff’s original complaint contained 333 pages. Plaintiff’s first amended  
16 complaint incorporated by reference his original 333 page complaint and contained an  
17 additional seventy eight pages of facts and allegations, in addition to several exhibits. The  
18 instant complaint is 117 pages. While the Court recognizes that plaintiff’s SAC is shorter  
19 than his first two complaints, this Court is still unable to determine the exact nature of  
20 plaintiff’s allegations or which allegations are claimed against each defendant. Although  
21 the Court must construe *pro se* pleadings liberally and afford plaintiff the benefit of any  
22 doubt, even *pro se* litigants must allege, with at least some degree of particularity, overt acts  
23 taken by each defendant which support his claims. Haines v. Kerner, 404 U.S. 519, 520  
24 (1972)(per curiam).

25 Plaintiff initially states this action arises out of “an episode of premeditated police,  
26 prosecutorial, and public defender misconduct, which resulted in charges brought and  
27 maintained against, and a one year of constructive custody enforced against, and several  
28 days of slavery imposed upon, an innocent man.” Doc. 51 at ¶1. Plaintiff later states

1 “Defendants worked together to fabricate false and corrupt evidence and cover up  
2 exculpatory evidence to arrest and later convict Plaintiff . . . .” Id. at ¶4. Throughout his  
3 complaint, plaintiff makes general allegations similar to those referenced above, but fails  
4 to provide any supporting facts.

5 The SAC details a history of equal protection violations dating back to 1981  
6 whereby plaintiff claims he has been subjected to “unlawful selective enforcement of the  
7 laws” due to his national origin and sexual orientation. Plaintiff also contends there is an  
8 “infrastructure formula, and template (“IFT”), which police and prosecuting agencies use  
9 to cover up unlawful acts.” Id. at ¶53 According to plaintiff, this formula is responsible  
10 for defendants filing complaints against and/or arresting plaintiff for incidents between  
11 1992 - 2006. Plaintiff spends thirty six pages describing factual scenarios that  
12 demonstrate how the U.C.S.D. police department, San Diego public defender, San Diego  
13 City Attorney, and certain state court judges have all conspired to harass plaintiff.  
14 However, those scenarios are merely background and do not relate to the conduct  
15 complained of here. It is not until page forty seven that plaintiff begins describing the  
16 factual allegations pertinent to the instant case. Those allegations are organized in such  
17 a haphazard and convoluted fashion that this Court is unable to ascertain the exact  
18 conduct that forms the basis of the underlying litigation. On page seventy four plaintiff  
19 begins reciting twenty five causes of action but does not state which facts in the previous  
20 seventy three pages are pertinent to each cause of action.


21 The Ninth Circuit has recognized that “confusing complaints. . .impose unfair  
22 burdens on litigants and judges.” McHenry v. Renne, 84 F.3d 1172, 1179-80 (9<sup>th</sup> Cir.  
23 1996). For the third time, this Court has reviewed plaintiff’s complaint and struggled to  
24 ascertain the facts and claims asserted. Such review imposes an unfair burden on this  
25 Court and defendants. This Court finds that plaintiff’s SAC does not contain “a short  
26 and plain statement of the claim showing [plaintiff] is entitled to relief” nor does it state  
27 each allegation in a “simple, concise, and direct” format. As a result plaintiff’s SAC does  
28 not comply with Rule 8.

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Based on the foregoing, IT IS HEREBY ORDERED that defendants' motions to dismiss are GRANTED. Pursuant to this Court's previous order, plaintiff shall not be granted leave to file an amended complaint. Plaintiff's SAC is DISMISSED WITH PREJUDICE and plaintiff's Motion for Leave to File Third Amended Complaint is DENIED.

IT IS SO ORDERED.

Dated : September 21, 2010



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John A. Houston  
United States District Judge