

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
SOUTHERN DISTRICT OF CALIFORNIA**

OWEN LINO,
CDCR #J-45685,

Plaintiff,

Civil No. 10cv0449 BTM (JMA)

**ORDER DISMISSING THIRD
AMENDED COMPLAINT**

vs.

J. KELLERMAN, et al.;

Defendants.

On February 26, 2010, Owen Lino (“Plaintiff”), a state prisoner currently incarcerated at Kern Valley State Prison, and proceeding pro se, submitted a civil action pursuant to 42 U.S.C. § 1983, along with a Motion to Proceed *In Forma Pauperis* (“IFP”). The Court granted Plaintiff’s Motion to Proceed IFP and sua sponte dismissed his Complaint for failing to state a claim pursuant to 28 U.S.C. § 1915(e)(2) and 1915A(b.). See Apr. 21, 2010 Order at 4-5. Plaintiff was granted leave to file a First Amended Complaint in order to correct the deficiencies in pleading noted by the Court. *Id.* On May 24, 2010, Plaintiff filed his First Amended Complaint. Before the Court could conduct a sua sponte screening of Plaintiff’s First Amended

1 Complaint, Plaintiff filed a Motion for Leave to file another Amended Complaint. The Court
2 granted Plaintiff's Motion and Plaintiff filed his Second Amended Complaint on August 16,
3 2010. Once again, before the Court could conduct a sua sponte screening of the Second
4 Amended Complaint, Plaintiff sought leave to file a Third Amended Complaint which was
5 granted by the Court. Plaintiff then sought an extension of time to file his Third Amended
6 Complaint. On December 8, 2010, Plaintiff filed his Third Amended Complaint ("TAC").

7 Plaintiff's TAC is ninety (90) pages long, names forty two (42) defendants, contains
8 single spaced writing and appears to allege a different claim against a different defendant on
9 each page. It is clear that Plaintiff's Third Amended Complaint fails to comply with Rule 8.
10 Specifically, Rule 8 provides that in order to state a claim for relief in a pleading it must contain
11 "a short and plain statement of the grounds for the court's jurisdiction" and "a short and plain
12 statement of the claim showing that the pleader is entitled to relief." FED.R.CIV.P. 8(a)(1) & (2).

13 Plaintiff's Third Amended Complaint is rambling and imposes an "unfair burden on litigants
14 and judges." *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996). In its current form,
15 Plaintiff's Third Amended Complaint fails to give defendants fair notice of the claims against
16 them. *Id.* If Plaintiff chooses to file an Amended Complaint, he must comply with Rule 8.
17 Because Plaintiff is also incarcerated, he is further cautioned that he must also comply with
18 Local Rule 8.2 which provides, in part, that prisoners must use the Court's form complaints and
19 any additional pages are "not to exceed fifteen (15) in number." S.D. CIVLR 8.2.

20 Plaintiff has also filed a "Motion for 3 Judge Court" pursuant to 28 U.S.C. § 2284.
21 Plaintiff's Motion provides no support as to why this action would require a three judge Court
22 and the Court can find no allegations in Plaintiff's Third Amended Complaint that would form
23 the basis of a three judge court pursuant to § 2284.

24 CONCLUSION AND ORDER

25 Good cause appearing, **IT IS HEREBY ORDERED** that:

- 26 1. Plaintiff's "Motion for 3 Judge Court" is **DENIED** [ECF No. 23].

27 ///

28 ///

