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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GAVIN B. DAVIS,

12 Plaintiff,

13 v.

14 JASON M. ADLER; ODESSA R.
15 JORGENSEN; and JANE DOES,

16 Defendants.

Case No.: 17cv387-AJB-JLB

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS PURSUANT
TO FEDERAL RULE OF CIVIL
PROCEDURE 8(a)**

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18 This matter comes before the Court on Defendant Jason Adler's ("Defendant Adler")
19 motion to dismiss Plaintiff Gavin Davis's ("Plaintiff") Complaint. (Doc. No. 3.) Plaintiff
20 opposes the motion. (Doc. No. 8.) Having reviewed the parties' arguments and controlling
21 legal authority and pursuant to Civil Local Rule 7.1.d.1., the Court finds the matter suitable
22 for decision on the papers and without oral argument. Accordingly, the motion hearing date
23 set for April 27, 2017, is vacated. For the reasons set forth more fully below, the Court
24 **GRANTS** Defendant Adler's motion to dismiss.

25 **BACKGROUND**

26 The following facts are taken from the Complaint and construed as true for the
27 limited purpose of resolving the pending motion. *See Moyo v. Gomez*, 40 F.3d 982, 984
28 (9th Cir. 1994).

1 On February 27, 2017, Plaintiff, proceeding *pro se*, filed a Complaint against
2 Defendants Jason Adler, Odessa Jorgensen, and Jane Doe Defendants (collectively referred
3 to as “Defendants”). (Doc. No. 1.) Plaintiff asserts several causes of action that stem from
4 several different events. (*See generally id.*)

5 One of the events occurred in March of 2015, when Plaintiff requested that
6 Defendant Adler stop using his name as a character in Defendant Adler’s “script.”¹ (*Id.* ¶
7 33.) Plaintiff states that Defendant Adler creates “mixed media.” (*Id.* ¶ 2.) Plaintiff’s
8 Complaint also points to an incident where Defendant Adler allegedly provided false and
9 misleading information to the authorities including the San Diego District Attorney, and
10 San Diego Police Department, which resulted in Plaintiff being illegally detained. (*Id.* ¶
11 36.) On October 5, 2016, Plaintiff alleges that he was subjugated to a pre-trial detention
12 where he was held without bail for approximately sixty minutes. (*Id.* ¶ 37.) On October 20,
13 2016, Plaintiff contends that he was assaulted at the San Diego central jail. (*Id.*)

14 In addition, Plaintiff claims that Defendant Adler developed, maintained, and
15 intended to commercialize a hate crime website on Facebook titled “I am a Fan of Gavin
16 Davis R.I.P.” (*Id.* ¶ 5.) Plaintiff alleges that this website is an illegal trespass on his
17 information, that he has been regularly harassed, and that Defendant Adler is attempting to
18 profit from collecting information about him and posting it to this website. (*Id.* ¶ 7.)

19 In sum, the Court finds that Plaintiff’s Complaint alleges a litany of violations
20 including cyberstalking, violation of his Fourth Amendment rights, harassment, and
21 copyright violations. (*See generally*, Doc. No. 1.) Plaintiff requests damages for medical
22 expenses, lost earnings and profits, loss of earning capacity, and exemplary damage if
23 sought. (*Id.* at 25.)

24 On March 21, 2017, Defendant Adler, proceeding *pro se*, filed the present motion,
25 his motion to dismiss. (Doc. No. 3.) Plaintiff opposed the motion on March 30, 2017, and
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28 ¹ Plaintiff provides no further information as to what this script was for, and provides no background as
to how Plaintiff was assisting Defendant in this matter. (Doc. No. 1 ¶ 33.)

1 Defendant Adler replied on April 13, 2017. (Doc. Nos. 8, 13.)

2 **LEGAL STANDARD**

3 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff's
4 complaint and allows a court to dismiss a complaint upon a finding that the plaintiff has
5 failed to state a claim upon which relief may be granted. *See Navarro v. Block*, 250 F.3d
6 729, 732 (9th Cir. 2001). "[A] court may dismiss a complaint as a matter of law for (1) lack
7 of a cognizable legal theory or (2) insufficient facts under a cognizable legal claim."
8 *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996)
9 (citations omitted). However, a complaint will survive a motion to dismiss if it contains
10 "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v.*
11 *Twombly*, 550 U.S. 544, 570 (2007). In making this determination, a court reviews the
12 contents of the complaint, accepting all factual allegations as true, and drawing all
13 reasonable inferences in favor of the nonmoving party. *Cedars-Sinai Med. Ctr. v. Nat'l*
14 *League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007).

15 Notwithstanding this deference, the reviewing court need not accept "legal
16 conclusions" as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for a
17 court to assume "the [plaintiff] can prove facts that [he or she] has not alleged." *Associated*
18 *Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526
19 (1983).

20 **DISCUSSION**

21 Defendant Adler argues that Plaintiff's Complaint should be dismissed as it fails to
22 comply with Federal Rule of Civil Procedure 8. (Doc. No. 3 at 5.)² Plaintiff retorts and
23 claims that Defendant Adler does not address any of his allegations contained in the
24 Complaint and instead attack's Plaintiff's character. (Doc. No. 8 at 6.)

25 The Complaint before the Court consists of twenty-eight pages of allegations mixed
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28 ² Pinpoint Cites are in reference to the CM/ECF page number and not the number listed on the original document.

1 with law, with portions of the Complaint referring to prior alleged fraudulent deceit by
2 Defendant Adler, as well as six pages devoted to detailing the U.S. Federal Anti-Cyber-
3 Stalking law. (*See generally* Doc. No. 1.) From a practical viewpoint, after an analysis of
4 the Complaint, it is impossible for the Court to designate the cause or causes of action
5 attempted to be alleged, or the events leading up to Plaintiff instituting this action.

6 Rule 8³ states that “[a] pleading that states a claim for relief must contain . . . a short
7 and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R.
8 Civ. P. 8(a)(2). As currently pled, Plaintiff’s Complaint fails to present a succinct and
9 straightforward statement alleging the wrongdoings of each Defendant. Thus, the Court
10 finds dismissal pursuant to Rule 8 appropriate. *See e.g., McHenry v. Renne*, 84 F.3d 1172,
11 1177–80 (9th Cir. 1996) (upholding a Rule 8(a) dismissal of a complaint that was
12 “argumentative, prolix, replete with redundancy, and largely irrelevant”); *Hatch v.*
13 *Reliance Ins. Co.*, 758 F.2d 409, 415 (9th Cir. 1985) (upholding a Rule 8(a) dismissal of a
14 complaint that was confusing and conclusory); *Nevijel v. North Coast Life Ins. Co.*, 651
15 F.2d 671, 674 (9th Cir. 1981) (holding that Rule 8(a) is violated when a complaint is
16 excessively “verbose, confusing and almost entirely conclusory”); *Zinzuwadia v. Mortg.*
17 *Elec. Reg. Sys., Inc.*, No. 2:12-cv-02281-KJM-KJN PS, 2012 WL 6737837, at *7 (E.D.
18 Cal. Dec. 28, 2012) (“Prolix, confusing complaints such as the ones plaintiffs filed in this
19 case impose unfair burdens on litigants and judges.”).

20 Furthermore, Plaintiff’s Complaint impermissibly groups all of the Defendants
21 together without distinguishing between the alleged conduct of each Defendant. This type
22 of group pleading fails to put the opposing party on notice of the wrong they allegedly
23 committed so that they can adequately defend themselves. Fed. R. Civ. P. 8; *see McHenry*,
24 84 F.3d at 1180 (“Something labeled a complaint but . . . without simplicity, conciseness
25 and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential
26 functions of a complaint.”); *see also Adobe Sys. Inc. v. Blue Source Grp., Inc.*, No. 14-CV-

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28 ³ All future references to Rule in this Order refer to the Federal Rules of Civil Procedure.

1 02147-LHK, 2015 WL 5118509, at *10 (N.D. Cal. Aug. 31, 2015) (“As a general rule,
2 when a pleading fails ‘to allege what role each Defendant played in the harm,’ this ‘makes
3 it exceedingly difficult, if not impossible, for individual Defendants to respond to
4 Plaintiffs’ allegations.”) (citation omitted).

5 The Court notes that it appreciates that Plaintiff is proceeding *pro se*, and that the
6 Court must liberally construe his pleadings. *See Estelle v. Gamble*, 429 U.S. 97, 106–07
7 (1976). However, “[p]ro se litigants must follow the same rules of procedure that govern
8 other litigants.” *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) *overruled on other*
9 *grounds by Lacey v. Maricopa Cnty.*, 693 F.3d 896 (9th Cir. 2012); *Ghazali v. Moran*, 46
10 F.3d 52, 54 (9th Cir. 1995) (“Although we construe pleadings liberally in their favor, pro
11 se litigants are bound by the rules of procedure.”); *Jacobsen v. Filler*, 790 F.2d 1362, 1364
12 (9th Cir. 1986) (“[P]ro se litigants in the ordinary civil case should not be treated more
13 favorably than parties with attorneys of record.”); *Am. Ass’n of Naturopathic Physicians v.*
14 *Hayhurst*, 227 F.3d 1104, 1107 (9th Cir. 2000) (“[A] pro se litigant is not excused for
15 knowing the most basic pleading requirements.”).

16 For all these reasons, the Court **DISMISSES** Plaintiff’s Complaint pursuant to Rule
17 8(a). As Plaintiff has not previously amended his Complaint, the Court will allow him leave
18 to amend. *See Eminence Capital, LLC, v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)
19 (noting that “leave shall be freely given when justice so requires” and that this policy is to
20 be “applied with extreme liberality.”).

21 However, if Plaintiff wishes to amend his Complaint, the Court advises that he
22 sufficiently plead each of his claims and refrain from alleging causes of action that have
23 no legal basis in this Court. For example, Plaintiff argues that Defendant Adler violated his
24 Fourth Amendment rights. (Doc. No. 1. ¶ 5.) However, the Court notes that “[t]he Fourth
25 Amendment’s prohibition against unreasonable searches and seizures does not apply to
26 searches by private citizens, even if the private citizens act unlawfully” *People v.*
27 *Wilkinson*, 163 Cal. App. 4th 1554, 1564 (2008). Moreover, Plaintiff alleges violations of
28 17 U.S.C. §§ 102(a), 105, and 106(1). (Doc. No. 1. ¶¶ 17-19.) However, these statutes deal


1 with copyright law and Plaintiff has not pled any facts pertaining to a copyrighted work,
2 or literary, musical, or dramatic works to which he has exclusive rights too. Accordingly,
3 if Plaintiff so chooses to amend, he should only plead allegations to which the Court may
4 grant him proper relief.

5 **CONCLUSION**

6 Based on the foregoing, the Court **GRANTS** Defendant Adler's motion to dismiss.
7 Plaintiff may file an amended complaint within **twenty-one (21) days** from the date of this
8 Order. Failure to cure the deficiencies noted herein may result in dismissal without further
9 opportunity to amend. While the Court has granted Plaintiff leave to amend some of his
10 claims, that does not entitle Plaintiff to plead entirely new causes of action. Thus, Plaintiff
11 must limit his amendment to curing the pleading deficiencies in this Complaint.

12
13 **IT IS SO ORDERED.**

14 Dated: April 26, 2017

15 
16 Hon. Anthony J. Battaglia
United States District Judge