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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10
11 MIKE E. MITCHELL,

12 Petitioner,

13 v.

14 DIR. OF CORRECTIONS,

15 Respondent.

Case No.: 17-cv-1204-GPC-BLM

**ORDER DISMISSING CASE
WITHOUT PREJUDICE AND WITH
LEAVE TO AMEND**

16
17 Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas
18 corpus pursuant to 28 U.S.C. § 2254 on May 30, 2017. (ECF No. 1.) On July 25, 2017,
19 this Court dismissed the case without prejudice and with leave to amend because
20 Petitioner had failed to satisfy the filing fee requirement, had failed to name a proper
21 respondent, and had failed to allege exhaustion of his state judicial remedies. (ECF No.
22 2.) Petitioner was given until September 11, 2017, to pay the \$5.00 filing fee or submit
23 adequate proof of his inability to pay the fee and submit a first amended petition that
24 cured the pleading deficiencies outlined in the July 25, 2017 Order.

25 On August 16, 2017, Petitioner filed a motion to proceed in forma pauperis which
26 the Court granted on August 18, 2017. (ECF Nos. 3, 6.) On September 11, 2017,
27 Petitioner filed an “Amended Complaint” (ECF No. 10), which the Court construes as an
28 amended petition.

1 **FAILURE TO STATE GROUNDS FOR RELIEF IN PETITION**

2 Rule 2(c) of the Rules Governing Section 2254 Cases states that the petition must
3 “specify all grounds for relief available to the petitioner,” and “state the facts supporting
4 each ground.” *See also Boehme v. Maxwell*, 423 F.2d 1056, 1058 (9th Cir. 1970) (trial
5 court’s dismissal of federal habeas proceeding affirmed where petitioner made
6 conclusory allegations instead of factual allegations showing that he was entitled to
7 relief). Here, Petitioner has violated Rule 2(c). While courts should interpret pro se
8 pleadings liberally, *see Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001), this does
9 not require the court to ferret out unstated grounds for relief.

10 The Court finds that the amended petition contains indecipherable allegations and
11 asserts no grounds for relief. This Court would have to engage in an exceedingly tenuous
12 analysis in order to attempt to identify and make sense of the amended petition. As a
13 result, the Court is unable to conclude that there is any “real possibility of constitutional
14 error.” *Blackledge v. Allison*, 431 U.S. 63, 75 n.7 (1977).

15 **FAILURE TO STATE A COGNIZABLE FEDERAL CLAIM**

16 It also appears that a § 2254 petition may not be the appropriate vehicle for
17 Petitioner to pursue the relief he seeks. Such petitions may assert only that a person “is in
18 custody in violation of the Constitution or laws or treaties of the United States.” 28
19 U.S.C. § 2254(a). Here, Petitioner claims prison officials are engaging in behavior that
20 prevents him from pursuing “an adequate defense and/or appeal.” (Am. Pet., ECF No. 10
21 at 1.) He also alleges that “prison conditions [are] not permitting [him] to meet court[’s]
22 stringent standards.” (*Id.*) Without the benefit of further allegations, the Court cannot
23 determine whether Petitioner is asserting that he is being held in custody by a state in
24 violation of federal law. If Petitioner seeks to challenge the conditions of his
25 confinement, he must file an action under 42 U.S.C. § 1983. *See Nettle v. Grounds*, 830
26 F.3d 922, 927 (9th Cir. 2016).

27 The Court warns Petitioner that he must also exhaust state judicial remedies before
28 seeking relief under § 2254. State prisoners who wish to challenge their state court

1 conviction must first exhaust state judicial remedies. 28 U.S.C. § 2254(b)–(c);
2 *Granberry v. Greer*, 481 U.S. 129, 133-34 (1987). To exhaust state judicial remedies, a
3 California state prisoner must present the California Supreme Court with a fair
4 opportunity to rule on the merits of every issue raised in his or her federal habeas
5 petition. *Granberry*, 481 U.S. at 133–34. For example, “[i]f a habeas petitioner wishes
6 to claim that an evidentiary ruling at a state court trial denied him the due process of law
7 guaranteed by the Fourteenth Amendment, he must say so, not only in federal court, but
8 in state court.” *Duncan v. Henry*, 513 U.S. 364, 366 (1995).

9 The Court also cautions Petitioner that a one-year period of limitation applies to a
10 petition for a writ of habeas corpus by a person in custody pursuant to the judgment of a
11 State court. The limitation period runs from the latest of:

12 (A) the date on which the judgment became final by the conclusion of
13 direct review or the expiration of the time for seeking such review;

14 (B) the date on which the impediment to filing an application created
15 by State action in violation of the Constitution or laws of the United States is
16 removed, if the applicant was prevented from filing by such State action;

17 (C) the date on which the constitutional right asserted was initially
18 recognized by the Supreme Court, if the right has been newly recognized by
19 the Supreme Court and made retroactively applicable to cases on collateral
review; or

20 (D) the date on which the factual predicate of the claim or claims
21 presented could have been discovered through the exercise of due diligence.

22 28 U.S.C. § 2244(d)(1). This statute of limitations does not run while a properly
23 filed state habeas corpus petition is pending. 28 U.S.C. § 2244(d)(2); *see Nino v.*
24 *Galaza*, 183 F.3d 1003, 1006 (9th Cir. 1999). *But see Artuz v. Bennett*, 531 U.S. 4,
25 8 (2000) (holding that “an application is ‘properly filed’ when its delivery and
26 acceptance [by the appropriate court officer for placement into the record] are in
27 compliance with the applicable laws and rules governing filings.”). Absent some
28 other basis for tolling, however, the statute of limitations does run while a federal

1 habeas petition is pending. *Duncan v. Walker*, 533 U.S. 167, 181–82 (2001).

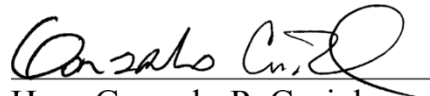
2 **CONCLUSION**

3 The Court **DISMISSES** this action without prejudice and with leave to amend. To
4 have this case reopened, Petitioner must, **no later than November 24, 2017**, file a
5 Second Amended Petition that cures the pleading deficiencies described above.

6 Petitioner is advised that if he has not submitted a second amended petition—
7 asserting a cognizable challenge to his custody based on a violation of federal law and
8 alleging exhaustion of his state court remedies with regard to any claims—by November
9 24, 2017, he will have to start over by filing a completely new habeas petition in this
10 Court. *See In re Turner*, 101 F.3d 1323 (9th Cir. 1997).

11 **IT IS SO ORDERED.**

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13 Dated: September 20, 2017


14 Hon. Gonzalo P. Curiel
15 United States District Judge
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