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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATASHA HILDA NELSON,
Plaintiff,
v.
KATHLEEN ALLISON, et al.,
Defendants.

Case No.: 3:22-cv-00377-CAB-AHG

ORDER:

**(1) GRANTING PLAINTIFF’S
MOTION TO EXCEED PAGE
LIMITATION [ECF No. 44],**

**(2) DENYING DEFENDANTS’
MOTION FOR PLRA SCREENING
[ECF No. 46], and**

**(3) NOTIFYING DEFENDANTS OF
OPPORTUNITY TO CONSENT**

Before the Court are two motions: (1) Plaintiff’s Motion to Exceed Page Limitations for her Second Amended Complaint, and (2) Defendants’ Motion for Screening of Plaintiff’s Second Amended Complaint pursuant to the Prison Litigation Reform Act (“PLRA”). ECF Nos. 44, 46. The Court will address each in turn.

1 **I. PLAINTIFF’S MOTION TO EXCEED PAGE LIMITATION**

2 Civil Local Rule 8.2(a) provides that complaints filed by prisoners pursuant to 42
3 U.S.C. § 1983 must be “legibly written or typewritten on forms supplied by the court,” and
4 any additional pages must not exceed a total of fifteen. *See* CivLR 8.2(a). Plaintiff retyped
5 the Court’s form complaint and added additional handwritten pages; as such, her pleading
6 comprises a total of 28 pages. *See* ECF No. 45. Plaintiff requests leave to exceed the page
7 limitations because “the additional pages are necessary to clearly allege her complaint and
8 comply with the Court’s recommendations[,]” since she “still wishes to pursue injunctive
9 relief ... [and] had to add more detailed facts to her complaint” to “remedy the deficiencies
10 discussed in [the Court’s] order.” ECF No. 44 at 2. Further, Plaintiff notes that nearly a
11 third of her Second Amended Complaint is handwritten due to her placement in the
12 Administrative Segregation Unit, increasing the overall length of her pleading. *Id.*

13 A court may *sua sponte* strike a document filed in violation of the Court’s local
14 procedural rules. *See Ready Transp., Inc. v. AAR Mfg., Inc.*, 627 F.3d 402, 404 (9th Cir.
15 2010) (noting district court’s “power to strike items from the docket as a sanction for
16 litigation conduct”); *Smith v. Frank*, 923 F.3d 139, 142 (9th Cir. 1991) (“For violations of
17 the local rules, sanctions may be imposed including, in appropriate cases, striking the
18 offending pleading.”). However, “district courts have broad discretion in interpreting and
19 applying their local rules.” *Simmons v. Navajo Cty.*, 609 F.3d 1011, 1017 (9th Cir. 2010)
20 (internal quotation and citation omitted). Further, courts construe the pleadings of *pro se*
21 litigants in civil rights cases liberally, affording them the benefit of the doubt. *See Karim-*
22 *Panahi v. L.A. Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988); *Bretz v. Kelman*, 773 F.2d
23 1026, 1027 n.1 (9th Cir. 1985) (en banc).

24 Here, Plaintiff’s Second Amended Complaint exceeds the page limitations set forth
25 in this district’s local rules by six pages. *Compare* ECF No. 1 (form complaint is seven
26 pages) *and* CivLR 8.2(a) (permitting fifteen additional pages after form complaint) *with*
27 ECF No. 45 (totaling 28 pages). Upon careful review, the Court finds that Plaintiff’s
28 Second Amended Complaint is clear and cognizably states claims, allowing the Court to

1 discern which factual claims in Plaintiff’s complaint are brought against which Defendants,
2 and when and where they are alleged to have occurred. *See Cafasso, U.S. ex rel. v. Gen.*
3 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (noting that while “the proper
4 length and level of clarity for a pleading cannot be defined with any great precision,” Rule
5 8(a) has “been held to be violated by a pleading that was needlessly long, or a complaint
6 that was highly repetitious, or confused, or consisted of incomprehensible rambling.”). The
7 Court agrees that Plaintiff utilized the extra pages to comply with recommendations set
8 forth in the Court’s order granting in part and denying in part Defendants’ motion to
9 dismiss—i.e., Plaintiff did not use the extra pages to add unrelated Defendants or unrelated
10 claims, and instead used them to bolster the claims that had been dismissed.

11 Accordingly, the Court **GRANTS** Plaintiff’s Motion to Exceed Page Limitations.
12 ECF No. 44.

13 **II. DEFENDANTS’ MOTION FOR PLRA SCREENING OF**
14 **PLAINTIFF’S SECOND AMENDED COMPLAINT**

15 In a barebones motion, Defendants request that the Court screen Plaintiff’s Second
16 Amended Complaint pursuant to 28 U.S.C. §§ 1915A(a)–(b).¹ ECF No. 46 at 2–3. Section
17 1915A(a) states as follows with respect to screening: “[t]he court shall review, before
18 docketing, if feasible or, in any event, as soon as practicable after docketing, a complaint
19 in a civil action in which a prisoner seeks redress from a governmental entity or officer or
20 employee of a governmental entity.” 28 U.S.C. § 1915A(a). However, “the screening
21 provision does not require a court, either explicitly or implicitly, to screen every time a
22 plaintiff seeks to amend the complaint.” *Oalsen v. Murguia*, No. 3:13-cv-388-MMD-VPC,
23

24 ¹ The Court notes that the title of Defendants’ motion is “Defendants’ Request for
25 Screening of Plaintiff’s Second Amended Complaint under 28 U.S.C. § 1915A.” ECF No.
26 46 at 1. However, in the motion, Defendants cite to §§ 1915(a)–(b), subsections of the *in*
27 *forma pauperis* statute which set out the affidavit, initial filing fee assessment, collection,
28 and full fee garnishment requirements applicable to prisoners, instead of §§ 1915A(a)–(b),
which defines screening in prisoner cases. *Id.* at 2–3. The Court will liberally construe
Defendants’ motion as referring to the correct statute.

1 2014 WL 6065622, at *3 (D. Nev. Nov. 12, 2014); *see Newton v. Eatmon*, No. 21cv15-
2 LAB-KSC, 2021 WL 549812, at *2 (S.D. Cal. Nov. 23, 2021) (“Based on the ‘plain
3 meaning’ of the terms ‘before docketing’ or ‘as soon as practicable after docketing,’ ... it
4 ‘could not be any clearer as to the timing of the mandatory screening.’”); *Oalsen*, 2014 WL
5 6065622, at *3 (“Defendants contend that 28 U.S.C. § 1915A by its plain meaning requires
6 screening of ‘a complaint’ and because an amended complaint is ‘a complaint,’ § 1915A
7 covers amended complaints. This interpretation ignores the statute’s plain meaning.”); *cf.*
8 *Brown v. Tromba*, No. 2:17-cv-2396-APC-BNW, 2020 WL 5632950, at *2 n.1 (D. Nev.
9 Sept. 17, 2020) (“There is also persuasive authority in the Ninth Circuit that provides that
10 the Court is not required to screen every amended complaint a litigant files”).

11 Here, the Court does not find good cause to screen Plaintiff’s Amended Complaint.²
12 “[T]he Supreme Court has [] recognized that ‘the PLRA mandated early judicial screening
13 to reduce the burden of prisoner litigation on the courts.’ [] Construing the PLRA ... to
14 require court screening of every amended complaint ... would increase, not reduce, the
15 burden on federal courts.” *Oalsen*, 2014 WL 6065622, at *4. Moreover, “a mere reading
16 of 28 U.S.C. § 1915A dispels any notion that it provides a basis for governmental
17 defendants to ... play a role in the screening process. The text and the legislative history of
18 28 U.S.C. § 1915A clearly indicate that the drafters of this legislation contemplated that
19 the screening required by § 1915A would be done—as has been done—without request by
20 governmental defendants.” *Freeman v. Lee*, 30 F. Supp. 2d 52, 56 (D.D.C. 1998) (“there
21 is no way, logically, to act *sua sponte* at the behest of another”); *see Rincon v. Cate*, No.
22 09-cv2698-JLS-NLS, 2011 WL 1642615, at *1–*2 (S.D. Cal. Apr. 29, 2011) (“The
23 Complaint in this case survived screening [], was served along with the summons, and
24

25
26 ² Without ruling on the merits, the Court notes that Plaintiff’s Second Amended Complaint
27 names the same defendants and describes the same claims as the original complaint, which
28 the Court already screened and subsequently reviewed again when it denied the bulk of
Defendants’ motion to dismiss, and includes more information regarding the dismissed
injunctive relief claim and the COVID-19 equal protection claim.

1 counsel appeared on behalf of Defendants. Thus, if an amended complaint were to be filed
2 in this Court, counsel for Defendants would be required to defend the case by filing a
3 motion under Rule 12(b)(6) or face a default judgment” because “the Court’s role is not to
4 act as counsel for the defense but rather it has a duty to act as an impartial decision maker”).
5 “This is not the first time a court of this District has made the point clear.” *Rincon*, 2011
6 WL 1642615, at *1 (citing the thorough order on the subject in *Brooks v. Alameida*, Case
7 No. 04-cv-2059-H-CAB, Doc. No. 30 at 8–13 (S.D. Cal. Sept. 7, 2005)). Further,

8 one might ask why it makes a difference to this court whether governmental
9 defendants move to dismiss a case brought by a prisoner proceeding *in forma*
10 *pauperis* under the Federal Rules of Civil Procedure or attempt to achieve the
11 same result by filing a ‘Motion for Screening for Dismissal,’ purportedly
12 under 28 U.S.C. § 1915A. It suffices to say that the rules are the rules and all
13 litigants, including governmental defendants, must follow them.
14 Governmental defendants simply should not be able to employ a procedure
15 not authorized by lawmakers. More fundamentally, however, there is a vast
16 imbalance of power and legal know how between prisoners proceeding *in*
17 *forma pauperis* and governmental defendants who are invariably represented
18 by lawyers. There is no reason to accentuate this imbalance even more by
19 permitting government lawyers to achieve a secondary gain or tactical
20 advantage [such as causing the prisoner to incur a ‘strike,’ potentially
21 prohibiting him from proceeding *in forma pauperis* in the future] by
22 commandeering an illicit procedure [of requesting screening].

23 *Freeman*, 30 F. Supp. 2d at 56, 56 n.3 (denying defendant’s motion for screening); *see also*
24 *Allen v. Ohio Dep’t of Rehab. & Corr.*, No. 20-cv-1746, 2021 WL 766867, at *2–*3 (N.D.
25 Ohio Feb. 26, 2021) (“Nothing in either § 1915(e)(2) nor § 1915A allows the defense to
26 bypass the Federal Rules of Civil Procedure to seek dismissal or to play a role in the
27 screening process. [] The Court’s role is not to act for the convenience of the defense, but
28 as an impartial decision maker.”) (internal citations omitted). Defendants’ motion here asks
the Court to perform a second screening even though Defendants do not attempt to argue
or explain why they believe the amended complaint may be defective. The Court declines
to do the lifting for Defendants here. If Defendants have a meritorious argument for

1 dismissal of the amended complaint, the Court expects they will bring an appropriate
2 motion under Rule 12. As such, Defendants’ request is **DENIED**. ECF No. 46.³

3 **III. NOTICE TO DEFENDANTS REGARDING OPPORTUNITY TO**
4 **CONSENT TO MAGISTRATE JUDGE JURISDICTION**

5 Plaintiff has consented to proceed before a United States Magistrate Judge. ECF No.
6 45 at 27–28. A Magistrate Judge may act as the presiding judge and may exercise civil
7 jurisdiction over an action “[u]pon the consent of the parties[.]” 28 U.S.C. § 636(c).
8 Therefore, the Court hereby gives notice to Defendants that they may execute and return a
9 “Consent to Exercise of Jurisdiction by a United States Magistrate Judge and Order of
10 Reference” to the court, which is attached to this Order for Defendants’ convenience, by
11 emailing the completed form to efile_bencivengo@casd.uscourts.gov by
12 **November 15, 2023**. *The parties are free to withhold consent without adverse*
13 *substantive consequences.*

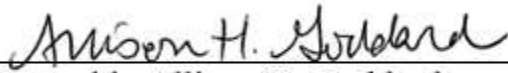
14 **IV. CONCLUSION**

15 For the reasons set forth above, the Court:

- 16 1. **GRANTS** Plaintiff’s Motion to Exceed Page Limitations (ECF No. 44);
- 17 2. **DENIES** Defendants’ Motion for PLRA Screening (ECF No. 46); and
- 18 3. **ORDERS** that Defendants file their responsive pleading by
19 **November 6, 2023**.

20 **IT IS SO ORDERED.**

21 Dated: November 2, 2023

22 
23 _____
Honorable Allison H. Goddard
United States Magistrate Judge

24 ³ Under Federal Rule of Civil Procedure 15, Defendants are required to respond to
25 Plaintiff’s Second Amended Complaint within 14 days. FED. R. CIV. P. 15(a)(3). Plaintiff
26 mailed her Second Amended Complaint to Defendants on October 15, 2023. ECF No. 45
27 at 29. The Court received Plaintiff’s filings on October 23, 2023 and entered it on the public
28 docket on October 26, 2023. *Compare* ECF No. 44 at 5 *with* ECF No. 45 NEF. Thus, since
the Defendants likely received Plaintiff’s Second Amended Complaint on the same date as
the Court, Defendants’ responsive pleading is due by November 6, 2023.

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

NATASHA HILDA NELSON,
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Case No.: 3:22-cv-00377-CAB-AHG

**NOTICE, CONSENT, AND
REFERENCE OF A CIVIL ACTION TO
A MAGISTRATE JUDGE**

Notice of a magistrate judge's availability. A United States magistrate judge of this court is available to conduct all proceedings in this civil action (including a jury or nonjury trial) and to order the entry of a final judgment. The judgment may then be appealed directly to the United States court of appeals like any other judgment of this court. A magistrate judge may exercise this authority only if all parties voluntarily consent.

You may consent to have your case referred to a magistrate judge, or you may withhold your consent without adverse substantive consequences. The name of any party withholding consent will not be revealed to any judge who may otherwise be involved with your case.

Consent to a magistrate judge's authority. The following parties consent to have a United States magistrate judge conduct all proceedings in this case including trial, the entry of final judgment, and all post-trial proceedings.

<i>Printed Names</i>	<i>Signatures of parties and attorneys</i>	<i>Dates</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REFERENCE ORDER

IT IS ORDERED: This case is referred to United States Magistrate Allison H. Goddard, to conduct all proceedings and order entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73.

Date

United States District Judge