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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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KEVIN POPE,

Case No. 3:13-cv-00357-MMD-VPC

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Plaintiff,

ORDER

v.

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JACK PALMER, et al.,

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Defendants.

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This prisoner civil rights action comes before the Court: (a) for initial review of the amended complaint under 28 U.S.C. § 1915A (dkt. no. 16); and (b) on defendants' motion for screening (dkt. no. 17). The Court defers action on the pauper application at this time.

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I. SCREENING

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When a "prisoner seeks redress from a governmental entity or officer or employee of a governmental entity," the court must "identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

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In considering whether the plaintiff has stated a claim upon which relief can be granted, all material factual allegations are accepted as true for purposes of initial review and are to be construed in the light most favorable to the plaintiff. See, e.g., *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal

1 conclusions unsupported by any actual allegations of fact are not assumed to be true in
2 reviewing the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). That is, bare and
3 conclusory assertions that constitute merely formulaic recitations of the elements of a
4 cause of action and that are devoid of further factual enhancement are not accepted as
5 true and do not state a claim for relief. *Id.*

6 Further, the factual allegations must state a plausible claim for relief, meaning
7 that the well-pleaded facts must permit the court to infer more than the mere possibility
8 of misconduct:

9 [A] complaint must contain sufficient factual matter, accepted as
10 true, to “state a claim to relief that is plausible on its face.” [*Bell Atlantic*
11 *Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974, 167 L.Ed.2d
12 929 (2007).] A claim has facial plausibility when the plaintiff pleads factual
13 content that allows the court to draw the reasonable inference that the
14 defendant is liable for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955.
15 The plausibility standard is not akin to a “probability requirement,” but it
16 asks for more than a sheer possibility that a defendant has acted
17 unlawfully. *Ibid.* Where a complaint pleads facts that are “merely
18 consistent with” a defendant’s liability, it “stops short of the line between
19 possibility and plausibility of ‘entitlement to relief.’” *Id.*, at 557, 127 S.Ct.
20 1955 (brackets omitted).

21 [W]here the well-pleaded facts do not permit the court to infer
22 more than the mere possibility of misconduct, the complaint has alleged -
23 but it has not “show[n]” - “that the pleader is entitled to relief.” Fed. Rule
24 Civ. Proc. 8(a)(2).

25 *Iqbal*, 556 U.S. at 678.

26 Allegations of a *pro se* complainant are held to less stringent standards than
27 formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519 (1972).

28 As the Ninth Circuit has explained, a pleading that says too much can violate
federal pleading rules just as can a pleading that says too little:

Rule 8 requires that a pleading “must contain” a “short and
plain statement” of the grounds for jurisdiction and the claim, as well as a
demand for relief sought. Fed.R.Civ.P. 8(a). Violations of this Rule warrant
dismissal, but there are multiple ways that it can be violated. One well-
known type of violation is when a pleading says too little — the baseline
threshold of factual and legal allegations required was the central issue in
the *Iqbal* line of cases. See, e.g., *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129
S.Ct. 1937, 173 L.Ed.2d 868 (2009). The Rule is also violated, though,
when a pleading says too much. *Cafasso, U.S. ex rel. v. Gen.*

1 *Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir.2011) (“[W]e have
2 never held—and we know of no authority supporting the proposition—that
3 a pleading may be of unlimited length and opacity. Our cases instruct
4 otherwise.”) (citing cases); *see also McHenry v. Renne*, 84 F.3d 1172,
1179-80 (9th Cir.1996) (affirming a dismissal under Rule 8, and
recognizing that “[p]rolix, confusing complaints such as the ones plaintiffs
filed in this case impose unfair burdens on litigants and judges”).

5 *Knapp v. Hogan*, 738 F.3d 1106, 1109 (9th Cir. 2013).

6 Moreover, under Local Rule LSR 2-1, a plaintiff filing a civil rights action must use
7 the Court's required civil rights complaint form. A plaintiff must follow all instructions in
8 the complaint form. *Inter alia*, the instructions for the complaint form permit a plaintiff to
9 assert only one constitutional violation per count.

10 In the present case, plaintiff's amended complaint uses 32 pages to present
11 three counts alleging, *inter alia*, that: (a) in 2011, Northern Nevada Correctional Center
12 (NNCC) officials terminated all chapel activities that used inmate facilitators, including
13 those for Kripalu and Siddha Yoga, which also eliminated associated access to
14 materials stored in the chapel; (b) in August 2012, NNCC officials returned materials
15 mailed to plaintiff by a Kripalu and Siddha Yoga organization without prior notice to him;
16 (c) NNCC officials denied plaintiff a lacto-vegetarian diet allegedly associated with
17 Kripalu and Siddha Yoga; (d) NNCC officials required inmates to mark Kripalu and
18 Siddha Yoga materials as personal property and then would not allow them to share the
19 personally-marked materials with other inmates; (e) NNCC officials at some point
20 obstructed, delayed, and/or denied gate access to outside sponsors coming to the
21 prison to conduct Kripalu and Siddha Yoga activities; (f) NNCC officials did not include
22 practitioners of Kripalu and Siddha Yoga in the “information loop” when discussing
23 proposed revisions to rules and policies with other religious groups; (g) defendant
24 Stogner engaged in allegedly similar practices when plaintiff previously was held at Ely
25 State Prison; (h) defendant Baca verbally assaulted and threatened plaintiff at some
26 point following a confrontation over Baca requiring that the lights not be dimmed during
27 Kripalu and Siddha Yoga sessions; and (i) based upon a letter that plaintiff sent to a

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1 Siddha Yoga practitioner, plaintiff believes that defendants have conspired to deny him
2 his constitutional rights.

3 Plaintiff can state the foregoing claims in far less than 32 pages. At present, the
4 pleading contains too much irrelevant detail and overlapping material for the Court to
5 efficiently screen the complaint and for defendants to be directed to respond.

6 The excessive length of the amended complaint is due, *inter alia*, to: (a) the
7 extensive background detail included regarding, *inter alia*, the history of Kripalu and
8 Siddha Yoga, plaintiff's individual training in the discipline, and the level of advancement
9 of various outside practitioners, such as how many years a practitioner studied with the
10 Dalai Lama; (b) similarly unnecessarily exhaustive background blow-by-blow detail
11 regarding exchanges at group meetings, individual conversations, and correspondence,
12 including plaintiff's feelings as a result of the exchanges and descriptions of why it took
13 time to arrange a particular meeting given plaintiff's then classification level; (c)
14 commentary as to how respectful and tactful plaintiff was in the sundry exchanges and
15 how allegedly rude and disrespectful prison officials were; (d) lengthy legal argument,
16 with extensive case citation, as to, *inter alia*, why the allegations state a claim for relief,
17 the application of the continuing violation doctrine, and/or the administrative exhaustion
18 requirement, including a three-page argument on exhaustion; (e) recitals of the
19 grievance history on each alleged violation; and (f) plaintiff jumping around in the
20 pleading back and forth from one alleged violation to another and back again, rather
21 than alleging one distinct claim at a time without overlap and repetition.¹

22 Plaintiff instead must provide a short and plain statement of the *operative factual*
23 *allegations* supporting each claim separately, without unnecessary prolix detail. A
24 pleading is used to allege the facts supporting a claim for relief; it is not a proper place
25 for legal argument and citation. Nor need plaintiff establish in explicit detail that he has

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27 ¹The Court implies no disrespect to the practitioners of Kripalu and Siddha Yoga,
28 to plaintiff's feelings, or otherwise. Rather, plaintiff simply must focus his pleading on
the operative factual allegations necessary to state claims for relief, *i.e.*, without
unnecessary and prolix detail.

1 satisfied the administrative exhaustion requirement. Alleged lack of exhaustion is an
2 affirmative defense that must be raised by the defendants; it is not a pleading
3 requirement. *Jones v. Bock*, 549 U.S. 199 (2007). Plaintiff thus need not detail the
4 grievance history on the alleged violations.

5 Moreover, as the instructions require, plaintiff must state each constitutional
6 violation in a separate count. Plaintiff instead included at least nine distinct constitutional
7 violations in three counts in the pleading, again jumping around from one to another
8 over the course of the pleading. Plaintiff can add counts to the three counts in the
9 complaint form by crossing out the number (I, II, or III) in the blank form pages and
10 writing in a new number (IV, etc.). If plaintiff files an amended complaint in response to
11 this order that combines more than one constitutional violation in a single count, the
12 Court will consider only the first constitutional violation alleged and will disregard all
13 remaining alleged incidents. Plaintiff must follow the instructions for the complaint form
14 and the orders of the Court.

15 In addition, the instructions direct the plaintiff to not file exhibits with the pleading.
16 Plaintiff may not incorporate documents by reference in stating his allegations. Plaintiff
17 must allege the *operative* facts within the body of the counts themselves, without
18 incorporating other documents. Plaintiff needs neither 32 pages of text nor 50 pages of
19 exhibits to provide a short and plain statement of the operative factual allegations
20 supporting his claims.

21 The Court will dismiss the current prolix pleading under Rule 8(a) and will give
22 plaintiff an opportunity to file a proper pleading. If plaintiff cannot provide a short and
23 plain statement of his claims in response to this order as directed, the Court will enter
24 final judgment dismissing the action without further advance notice.

25 **II. MOTION FOR SCREENING**

26 The Court will deny defendants' motion for screening, which was filed twenty
27 days after the amended complaint, as both moot and unnecessary. As defendants
28 note, the Court stated in the order severing this action from another that it would screen

1 the individual pleadings in each severed action. The Court disfavors a motion that seeks
2 to remind it to do something that is done as a matter of course pursuant to § 1915A.
3 Defendants are under no obligation to answer until ordered to do so.

4 **III. CONCLUSION**

5 It is therefore ordered that the amended complaint is dismissed without prejudice
6 under Rule 8(a) of the Federal Rules of Civil Procedure, subject to an opportunity to file
7 an amended pleading correcting the deficiencies in the pleading. It is further ordered
8 that plaintiff shall have thirty (30) days within which to mail an amended complaint to the
9 Clerk for filing correcting the deficiencies in the prior pleading. If plaintiff does not timely
10 mail an amended complaint that corrects the deficiencies in the prior pleading, final
11 judgment will be entered dismissing the action without further advance notice.

12 It is further ordered that plaintiff shall clearly title any amended complaint filed as
13 such by placing the word "SECOND AMENDED" immediately above "Civil Rights
14 Complaint" on page 1 and shall place the docket number, 3:13-cv-00357-MMD-VPC,
15 above the word "SECOND AMENDED" in the space for "Case No." Under Local Rule
16 LR 15-1, any amended complaint must be complete in itself without reference to prior
17 filings. Any allegations, parties, or requests for relief from prior papers that are not
18 carried forward in the pleading no longer will be before the Court.

19 It is further ordered that defendant's motion (dkt. no. 17) for screening is denied
20 as unnecessary and moot.

21 The Clerk shall send plaintiff (2) two copies of a civil rights complaint form, one
22 (1) copy of the instructions for the form, and one (1) copy of his amended complaint
23 (dkt. no. 16).

24 DATED THIS 23rd day of May 2014.



26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE