

APPENDIX A

APP. A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 27 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KAVIN MAURICE RHODES,

Plaintiff-Appellant,

v.

SAM OHTA; et al.,

Defendants-Appellees.

No. 17-16540

D.C. No. 4:16-cv-06805-PJH
Northern District of California,
Oakland

ORDER

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On August 9, 2017, the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, response to the court's order, and opening brief received on November 13, 2017, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 7) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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AUG 9 2017

MOLLY C. DWYER, CLERK
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ORDER

A review of the district court's docket reflects that the district court has certified that this appeal is not taken in good faith and has revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

- (1) file in this court a motion to proceed in forma pauperis, OR
- (2) pay to the district court \$505.00 for the filing and docketing fees for this appeal AND file in this court proof that the \$505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice. If the court dismisses the appeal as frivolous, this appeal may be counted as a strike under 28 U.S.C. § 1915(g).

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Corina Orozco
Deputy Clerk
Ninth Circuit Rule 27-7

ORIGINAL
FILED

JUL 24 2017

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAVIN MAURICE RHODES,

Plaintiff,

v.

SAM OHTA, et al.,

Defendants.

Case No. 16-cv-06805-PJH

ORDER OF DISMISSAL

Re: Dkt. Nos. 17, 18

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The second amended complaint was dismissed with leave to amend and plaintiff has filed a third amended complaint (Docket No. 19).

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)

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Northern District of California

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(citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

LEGAL CLAIMS

Plaintiff presents many allegations of mistreatment and violations of his rights by correctional officers, prison officials, attorneys and judges at two prisons over the course of several years.

Pursuant to Fed. R. Civ. P. 8(a)(2), a plaintiff must provide “a short and plain statement of the claim showing that the pleader is entitled to relief....” Rule 8 requires “sufficient allegations to put defendants fairly on notice of the claims against them.” *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir.1991)). *Accord Richmond v. Nationwide Cassel L.P.*, 52 F.3d 640, 645 (7th Cir.1995) (amended complaint with vague and scanty allegations fails to satisfy the notice requirement of Rule 8.) “The propriety of dismissal for failure to comply with Rule 8 does not depend on whether the complaint is wholly without merit,” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996).

Moreover, “[M]ultiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different defendants belong in different suits,” not only to prevent the sort of “morass” that a multi-claim, multi-defendant suit can produce, “but also to ensure that prisoners pay the required filing fees – for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of required fees.” *Id.* (citing 28 U.S.C. § 1915(g)).

The third amended complaint is 51 pages and names approximately 58 defendants. Plaintiff presents allegations concerning events at two different prisons over the course of several years. He also names as defendants several attorneys, including deputy attorneys general who litigated his previous cases and a superior court judge. Plaintiff alleges that all defendants are engaged in a multi-district racketeering conspiracy to retaliate against plaintiff for the filing of a prior federal civil rights lawsuit. He also raises many other claims and violations of the Racketeer Influenced and Corrupt Organizations (“RICO”) Act.

The majority of plaintiff’s allegations concern conduct that occurred at Kern Valley State Prison, which lies in the Eastern District of California. Plaintiff presents allegations that occurred between February 1, 2014 and August 30, 2016 at Kern Valley State Prison that were committed by more than 30 defendants who were employed at that facility. He also alleges that several attorneys and a judge retaliated against plaintiff while he pursued a prior federal action. Plaintiff’s complaint also contains allegations against several defendants who were employed at Pelican Bay State Prison (“PBSP”), which is in this district. Plaintiff alleges that the PBSP defendants violated his rights after he was transferred to that facility on August 30, 2016.

Plaintiff’s complaint in this action illustrates the “unfair burdens” imposed by complaints, “prolix in evidentiary detail, yet without simplicity, conciseness and clarity” which “fail to perform the essential functions of a complaint.” *McHenry*, 84 F.3d at 1179-

1 80. Plaintiff has also presented many unrelated claims. The first and second amended
2 complaints were dismissed with leave to amend to focus on the events that occurred at
3 PBSP. Plaintiff was informed that the allegations that occurred during plaintiff's
4 incarceration at Kern Valley State Prison and elsewhere were dismissed from this action
5 without prejudice. Plaintiff could file a case or cases concerning these events in the
6 district or districts where they occurred. Plaintiff was also informed that his RICO claim
7 was dismissed from this action and he should only discuss the claims against the PBSP
8 defendants.

9 Plaintiff has repeatedly failed to follow the court's instructions and has instead filed
10 a third amended complaint that is nearly identical to the second amended complaint. The
11 RICO claims and claims against defendants in other districts have already been
12 dismissed from this action as set forth in prior orders.

13 Plaintiff was provided one final opportunity to present his claims against the PBSP
14 defendants. He was instructed not to include defendants and claims from the other
15 districts that have been dismissed without leave to amend. He was informed that if he
16 did include lengthy allegations concerning these defendants and claims, then the entire
17 action would be dismissed regardless if there were cognizable claims against the PBSP
18 defendants. See *McHenry* at 1179. Plaintiff has failed to follow these instructions and
19 has instead filed a complaint substantially similar to the prior complaints. This action is
20 dismissed as frivolous and malicious and for failure to comply with Rule 8 and failure to
21 follow the court's instructions. Because plaintiff has already been provided multiple
22 opportunities to amend, yet he has failed to follow court instructions, this action is
23 dismissed with prejudice. See *California Coal. for Families & Children v. San Diego Cty.*
24 *Bar Ass'n*, 657 Fed. Appx. 675, 678 (9th Cir. 2016).

25 Plaintiff has also included allegations in the third amended complaint against the
26 undersigned and court staff, and he seeks to recuse all federal judges in California. "The
27 standard for recusal under 28 U.S.C. §§ 144, 455 is 'whether a reasonable person with
28 knowledge of all the facts would conclude that the judge's impartiality might reasonably

be questioned.” *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (quoting *Mayes v. Leipziger*, 729 F.2d 605, 607 (9th Cir. 1984)) (internal citations omitted). “The alleged prejudice must result from an extrajudicial source; a judge’s prior adverse ruling is not sufficient cause for recusal.” *Id.* Under Ninth Circuit authority, “the challenged judge [herself] should rule on the legal sufficiency of a recusal motion in the first instance.” *Id.* at 940 (citing *United States v. Azhocar*, 581 F.2d 735, 738 (9th Cir. 1978)).

Plaintiff has failed to demonstrate any reason for recusal. That plaintiff’s complaint has been dismissed with leave to amend on several occasions does not serve as a basis for recusal. See *Mayes*, 729 F.2d at 607 (“A judge’s previous adverse ruling alone is not sufficient bias.”) (citation omitted). Plaintiff’s remaining contentions are meritless and the motion for recusal is denied. See *Ronwin v. State Bar of Arizona*, 686 F.2d 692, 701 (9th Cir. 1981), *rev’d on other grounds sub nom. Hoover v. Ronwin*, 466 U.S. 558 (1984) (“[A] judge is not disqualified merely because a litigant sues or threatens to sue him. . . . Such an easy method for obtaining disqualification should not be encouraged or allowed.”) (internal quotation marks and citations omitted); *Gabor v. Seligmann*, 222 Fed. Appx. 577, 578 (9th Cir. 2007) (judge did not abuse his discretion by failing to recuse himself after the plaintiffs named him as a defendant in their amended complaint).

CONCLUSION

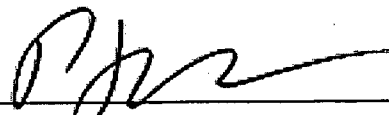
1. The motion for recusal of all federal judges in California (Docket No. 17) is **DENIED**.

2. The motion to amend (Docket No. 18) is **GRANTED** and the court has reviewed the third amended complaint.

3. This action is **DISMISSED** with prejudice for the reasons set forth above. The clerk shall close this case.

IT IS SO ORDERED.

Dated: July 24, 2017


 PHYLIS J. HAMILTON
 United States District Judge