



(PC) Brown v. Gipson et al

2015 | Cited 0 times | E.D. California | February 24, 2015

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

WILLIAM E. BROWN,

Plaintiff, vs. CONNIE GIPSON, et al.,

Defendants

Case No. 1:13 cv 02084 GSA PC

ORDER DISMISSING COMPLAINT AND GRANTING PLAINTIFF LEAVE TO FILE AN
AMENDED COMPLAINT

AMENDED COMPLAINT DUE IN THIRTY DAYS

I. Screening Requirement Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). 1 The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are

that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(e)(2)(B)(ii). If the court determines that the action or

1 Plaintiff filed a consent to proceed before a magistrate judge on January 27, 2014 (ECF No. 6). 1 2 3
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appeal . . . 1915(e)(2)(B)(ii).

Swierkiewicz v. Sorema N. A., 534 Swierkiewicz

Neitze v. Williams,



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Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)). II. Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at Pelican Bay State Prison, brings this civil rights action against defendant correctional officials employed by the CDCR at CSP Corcoran. Plaintiff names the following individual defendants: Warden Connie Gipson; Sgt. Wilson; Sgt. J. Gonzales; A. Guzman; E. Castro; S. Weber. Sgt. Rasley; Lt. M. Marsh; C/O Saucedo; C/O Scalfe; C/O Miere. action pursuant to 42 U.S.C. § 1983, and naming individual defendants. Attached to the

complaint is a copy of a document filed in Coleman v. Brown, et al., No. CV-S-90-0520 LKK

pport of Motion for Enforcement of Court 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

the notice of motion and reply in the Coleman case is one page declaration of Plaintiff, along with a 22 page statement of facts. confinement in the CDCR over the past several years. Plaintiff refers to treatment for his mental

health and medical conditions, recommendations by his sentencing court for mental health treatment, documents regarding gang validation, disciplinary action against Plaintiff, unspecified due process allegations, a hunger strike and the response to it by correctional officials, retaliation prolonged physical and psychological isolation, inadequate food, extreme temperatures, yard

l extraction. A

A. Class Action Plaintiff appears to be bringing this action to enforce court orders in Coleman v. Brown, CV-S-90-0520-LKK-JFM. Individual suits for injunctive and equitable relief from unconstitutional prison conditions cannot be brought where there is a pending class action suit involving the same subject matter. McNeil v. Guthrie, 945 F.2d 1163, 1165 (10 th

Cir. 1991)); Gillespie v. Crawford, 858 F.2d 1101, 1103 (5 th class and other prisoners may assert any equitable or declaratory claims they have, but they must do so by urging further actions through the class representative and attorney, including contempt Id. Any asserted requests for injunctive relief are therefore dismissed. If Plaintiff seeks to complain about a perceived failure to comply with orders in Coleman

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B. Civil Rights Act

2 Counsel for the plaintiff class in Coleman is Donald H. Specter at the Prison Law Office, General Delivery, San Quentin, CA 94964. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27



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Should Plaintiff seek to initiate a separate civil action from Coleman, he is advised of the following. To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.

Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740,

kind of direct, personal participation in the deprivation, but also by setting in motion a series of

acts by others which the actor knows or reasonably should know would cause others to inflict the Id. (quoting Johnson at 743-44). Plaintiff has not specifically charged each defendant with conduct indicating that they knew of and disregarded a serious risk to nts liable simply by alleging a list of grievances and then charge defendants with the vague allegation that they neglected his condition. Plaintiff must allege facts indicating that each defendant was aware of a specific harm to Plaintiff, and acted with deliberate indifference to that harm. Plaintiff has failed to do so here. The complaint should therefore be dismissed. Plaintiff will, however, be granted leave to file an amended complaint.

Plaintiff need not, however, set forth legal arguments in support of his claims. In order to hold an individual defendant liable, Plaintiff must name the individual defendant, describe where that defendant is employed and in what capacity, and explain how that defendant acted under color of state law. Plaintiff should state clearly, in his or her own words, what happened. Plaintiff must describe what each defendant, by name, did to violate the particular right described by Plaintiff. Plaintiff has failed to do so here. ///

C. Rule 18 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

claims that have occurred over time. iginal claim,

counterclaim, cross-claim, or third-party claim, may join, either as independent or alternate Fed. R. Civ. P. 18(a). Thus, multiple claims against a single party are permissible, but Claim A

against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in different suits, not only to prevent the sort of morass (a multiple claim, multiple defendant) suit produces, but also to ensure that prisoners pay the required filing fees. The Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without the prepayment of the required fees. 28 U.S.C. § 1915(g). George v. Smith, 507 F.3d 605, 607 (7 th

Cir. 2007). be given an opportunity to file a first amended complaint under this case number, wherein



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he is

directed to plead/allege only related claims. All unrelated claims should be brought in separate suits. Plaintiff is advised that if he chooses to file a first amended complaint, and fails to comply with Rule 18(a), the Court will count all frivolous/noncognizable unrelated claims that are dismissed as strikes, such that Plaintiff may be barred from filing in forma pauperis in the future. III. Conclusion and Order at it does not state any claims upon which relief may be granted under section 1983. The Court will provide Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not change the nature of this suit by adding new, unrelated claims in his amended complaint. George

Fed. R. Civ. P. 8(a), but must state what

rights, *Hydrick*, 500 F.3d at 987- 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

be [sufficient] *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554 (2007) (citations omitted).

Finally, Plaintiff is advised that an amended complaint supercedes the original complaint, *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, - in an

King, 814 F.2d at 567 (citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981)); accord *Forsyth*, 114 F.3d at 1474.

Accordingly, based on the foregoing, it is HEREBY ORDERED that: 1. claim;

2. 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file

an amended complaint; 4. Plaintiff may not add any new, unrelated claims to this action via his amended

complaint and any attempt to do so will result in an order striking the amended complaint; and 5. If Plaintiff fails to file an amended complaint, the Court will recommend dismiss

this action, with prejudice, for failure to state a claim.

IT IS SO ORDERED. Dated: February 23, 2015 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE

