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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MICHAEL LUCAS,	)	CASE NO. 1:08-cv-00515-AWI GSA PC
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATIONS
	)	THAT THIS ACTION BE DISMISSED FOR
v.	)	FAILURE TO STATE A CLAIM UPON
	)	WHICH RELIEF COULD BE GRANTED
JAMES TILTON, et al.,	)	
	)	OBJECTIONS DUE IN THIRTY DAYS
Defendants.	)	
	/	

**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. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. This action proceeds on the first amended complaint, filed in response to an order dismissing the original complaint and granting Plaintiff leave to file an amended complaint. Plaintiff names the following individual defendants: James E. Tilton; N. Dawson; N. Lopez; A. S. Muhammad.

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 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.  
5 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and  
6 plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a).  
7 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the  
8 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading  
9 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330  
10 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements  
11 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257  
12 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

## 13 **II. Plaintiff’s Claims**

14 In the order dismissing the original complaint, the Court noted the following allegations. The  
15 events at issue occurred at Avenal State Prison. Plaintiff is seeking accommodation to “allow him  
16 to fulfill his Islamic duties and make pregnant his wife.” Plaintiff specifically seeks accommodation  
17 for either a conjugal visit or to have a semen sample of his sent to his wife.

18 The Court advised Plaintiff of the following requirements to state a claim for relief. It is well  
19 settled that prisoners have no constitutional right while incarcerated to contact visits or conjugal  
20 visits. Gerber v. Hickman, 291 F.3d 617, 621 (9<sup>th</sup> Cir. 2002), citing Kentucky Dep’t of Corrs. v.  
21 Thompson, 490 U.S. 454, 460 (1989)(no due process right to unfettered visitation); Hernandez v.  
22 Coughlin, 18 F.3d 133, 137 (2<sup>nd</sup> Cir. 1994)(no constitutional right to conjugal visits). The fact that  
23 California prison officials may choose to permit some inmates the privilege of conjugal visits is  
24 simply irrelevant to whether there is a constitutional right to procreate while in prison. Gerber, 291  
25 F.3d at 621. Plaintiff did not allege any facts in the original complaint indicating that he had been  
26 deprived of a protected interest.

27 In the first amended complaint, Plaintiff sets forth the following statement of claim, in its  
28 entirety.

1 All of the Defendants denied Plaintiff any accommodations to fulfill  
2 his religious practice. N. Dawson and N. Lopez deny Plaintiff his  
3 liberty right based on CCR sections that do not pertain to plaintiff.  
4 James Tilton denies plaintiff his rights based on statements from  
5 Muslim chaplain and CCR sections. James Tilton is in violation of  
6 plaintiff's rights and has place a burden on plaintiff that is substantial,  
7 oppressive, and potentially irreparable. A.S. Muhammad violated  
8 plaintiff's rights by judging wrongly plaintiff's beliefs and stating his  
9 beliefs as plaintiff's, therefore denying plaintiff the freedom of his  
10 religion, and surcumventing [sic] plaintiff's rehabilitation.

7 (Am. Compl. ¶ IV.)

8 In the order dismissing the original complaint, Plaintiff was advised, in addition to the  
9 substantive requirements for stating a claim, of the pleading requirements. In addition to the Rule  
10 8 language referred to above, Plaintiff was specifically advised that he must state what each named  
11 defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights. Hydrick  
12 v. Hunter, 500 F.3d 978, 987-88 (9<sup>th</sup> Cir. 2007). Although accepted as true, "[f]actual allegations  
13 must be [sufficient] to raise a right to relief above the speculative level . . ." Bell Atlantic Corp. v.  
14 Twombly, 127 S.Ct. 1955, 1965 (2007)(citations omitted).

15 The Court finds the allegations in the first amended complaint vague and conclusory. In the  
16 original complaint, Plaintiff clearly articulated his claim that he was denied, in his view, the right  
17 to procreate. Plaintiff was provided legal authority for the proposition that he clearly does not have  
18 a protected interest in procreation or conjugal visits. In the amended complaint, Plaintiff identifies  
19 individual defendants and sets forth conclusory statements that they violated his rights.

20 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of the  
21 cause of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129  
22 S.Ct. 1937, 1949 (2009), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). "Plaintiff  
23 must set forth sufficient factual matter accepted as true, to 'state a claim that is plausible on its  
24 face.'" Iqbal, 129 S.Ct. at 1949, quoting Twombly, 550 U.S. at 555. While factual allegations are  
25 accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

26 In the order dismissing the original complaint, Plaintiff was advised of the deficiencies in his  
27 complaint and granted leave to file an amended complaint. Because Plaintiff has not cured the  
28 deficiencies in the amended complaint, the court recommends dismissal of the claims with prejudice

1 for failure to state a federal claim upon which the court could grant relief. See Noll v. Carlson, 809  
2 F. 2d 1446, 1448 (9<sup>th</sup> Cir. 1987) (prisoner must be given notice of deficiencies and opportunity to  
3 amend prior to dismissing for failure to state a claim).

4           Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for  
5 failure to state a claim upon which relief can be granted.

6           These findings and recommendations are submitted to the United States District  
7 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636 (b)(1)(B). Within  
8 thirty days after being served with these findings and recommendations, plaintiff may file written  
9 objections with the court. Such a document should be captioned “Objections to Magistrate Judge’s  
10 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the  
11 specified time waives all objections to the judge’s findings of fact. See Turner v. Duncan, 158 F.3d  
12 449, 455 (9<sup>th</sup> Cir. 1998). Failure to file objections within the specified time may waive the right to  
13 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14  
15  
16 IT IS SO ORDERED.

17 **Dated: June 16, 2010**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE