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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ALBERT JOHN HAMILTON JR.,
Plaintiff,
v.
STEEB, et al.,
Defendants.

Case No. CV 17-5300 ODW (SS)

**MEMORANDUM AND ORDER
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

I.

INTRODUCTION

On July 18, 2017, Plaintiff Albert John Hamilton Jr. ("Plaintiff"), a state prisoner proceeding pro se, filed a complaint pursuant to 42 U.S.C. § 1983 and the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131 et seq. ("Complaint," Dkt. No. 1).

Congress mandates that district courts perform an initial screening of complaints in civil actions where a prisoner seeks redress from a governmental entity or employee. 28 U.S.C.

1 § 1915A(a). This court may dismiss such a complaint, or any portion
2 of it, before service of process if the court concludes that the
3 complaint (1) is frivolous or malicious, (2) fails to state a claim
4 upon which relief can be granted, or (3) seeks monetary relief from
5 a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).
6 For the reasons stated below, the Complaint is DISMISSED with leave
7 to amend.¹

8
9 **II.**

10 **ALLEGATIONS OF THE COMPLAINT**

11
12 Plaintiff sues the following employees of the California Men's
13 Colony State Prison ("CMC") in their individual capacities only:
14 (1) Correctional Officer C. Steeb; (2) Sergeant E. Cabrerros;
15 (3) Lieutenant Bookmen; (4) Associate Warden J. Ingwerson;
16 (5) Lieutenant S. Norton; and (6) Lieutenant A.F. Martinez
17 (collectively "Defendants"). (Compl. at 3-4).

18
19 Plaintiff's allegations are conclusory and lack sufficient
20 factual support. Plaintiff, who alleges that he is "disabled,"
21 asserts that on December 18, 2015, Steeb used "excessive force"
22 while handcuffing him, causing a "medical injury." (Id. at 5).
23 Cabrerros failed to train CMC staff on how to properly handcuff
24 "(ADA) inmates" such as Plaintiff. (Id. at 5-6). Bookmen, Castelo,
25 Ingwerson, Norton, and Martinez all allegedly had "personal
26

27 ¹ Magistrate Judges may dismiss a complaint with leave to amend
28 without approval of the District Judge. See McKeever v. Block,
932 F.2d 795, 798 (9th Cir. 1991).

1 knowledge" that Plaintiff suffered a "medical injury" because of
2 Steeb's use of excessive force, "but [they] did nothing." (Id. at
3 5). Although not included in the list of Defendants, Debbie
4 Asuncion, currently the Warden of California State Prison, Los
5 Angeles County, had "personal knowledge of her staff['s] unusual
6 behavior and refuse[d] to do the (Law)."² (Id. at 6).

7
8 Cabreros filed a "false report" regarding the incident, which
9 was "granted in part by the CMC-East (AW) D. Samuel." (Id. at 5).
10 Norton violated unidentified California Department of Corrections
11 policies and regulations and retaliated against Plaintiff for
12 filing a grievance. (Id. at 5-6). Martinez "also violated the
13 CDCR-Third [sic] Level Appeal Decision, dated October 14, 2016.
14 (Id. at 5). The California Department of Corrections continues to
15 violate his Fourteenth Amendment rights because the "CDCR-RVR
16 [Rules Violation Report]" has not been dismissed "in full." (Id.).

17
18 Plaintiff summarily asserts that Defendants violated his
19 First, Fourth, Eighth, and Fourteenth Amendment rights under the
20 Constitution, along with violating his "(ADA) Constitution[al]
21 rights." (Id. at 6). Plaintiff seeks \$10,000 in monetary damages
22 from each Defendant. (Id.).

23 \\

24 \\

25
26 ² The Court takes notice that, according to the CDCR website,
27 "Debbie Asuncion has been the Warden or acting Warden at California
28 State Prison, Los Angeles County, since December 2015." See
http://www.cdcr.ca.gov/Facilities_Locator/LAC.html. It is unclear
whether Asuncion ever worked at CMC, or when.

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III.
DISCUSSION

Pursuant to 28 U.S.C. § 1915A(b), the Court dismisses the Complaint due to defects in pleading. A pro se litigant in a civil rights case, however, must be given leave to amend his or her complaint unless "it is absolutely clear that the deficiencies of the complaint cannot be cured by amendment." See Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation marks omitted). Accordingly, the Complaint is dismissed, with leave to amend.

A. Plaintiff Fails To State A Claim Under The ADA

Plaintiff unsuccessfully attempts to state a claim for relief under the ADA. Title II of the ADA, which "prohibits a 'public entity' from discriminating against a 'qualified individual with a disability on account of that individual's disability,' [] covers inmates in state prisons," but the allegations here fail to state a claim. Pennsylvania Dept. of Corr. v. Yeskey, 524 U.S. 206, 208 (1998) (quoting 42 U.S.C. § 12132).

To state a claim under § 12132 of Title II, a plaintiff must allege that:

- (1) he is an individual with a disability;
- (2) he is otherwise qualified to participate in or receive the benefit of some public entity's services, programs, or

1 activities; (3) he was either excluded from
2 participation in or denied the benefits of the public
3 entity's services, programs, or activities, or was
4 otherwise discriminated against by the public entity;
5 and (4) such exclusion, denial of benefits, or
6 discrimination was by reason of [his] disability.

7
8 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1021 (9th Cir.
9 2010) (quoting McGary v. City of Portland, 386 F.3d 1259, 1265 (9th
10 Cir. 2004)). In order to allege a qualifying disability under the
11 ADA, a plaintiff must demonstrate that he has been diagnosed with
12 a condition that substantially limits his life activities. Bragdon
13 v. Abbott, 524 U.S. 624, 631 (1998); see also Weaving v. City of
14 Hillsboro, 763 F.3d 1106, 1111 (9th Cir. 2014) ("A 2008 Amendment
15 to the ADA provides, 'The definition of disability in this chapter
16 shall be construed in favor of broad coverage . . .' 'The term
17 'substantially limits' shall be interpreted consistently with the
18 [amendment].'" (citing 42 U.S.C. § 12102(4)(A-B)).

19
20 "The ADA prohibits discrimination because of disability, not
21 inadequate treatment for disability." Simmons, 609 F.3d at 1022
22 (emphasis added). Insufficient medical care does not state a claim
23 under the ADA. Id.; see also Bryant v. Madigan, 84 F.3d 246, 249
24 (7th Cir. 1996) ("[T]he Act would not be violated by a prison's
25 simply failing to attend to the medical needs of its disabled
26 prisoners . . . The ADA does not create a remedy for medical
27 malpractice.").

1 Here, Plaintiff's ADA claim fails because the Complaint does
2 not identify Plaintiff's specific qualifying disability, or allege
3 that Plaintiff was denied access to a governmental benefit because
4 of that disability. Instead, Plaintiff merely claims that that he
5 is an "(ADA) inmate," by which he presumably means that he is
6 somehow disabled, and that Steeb injured him while using handcuffs.
7 (Compl. at 5-6). To state an ADA claim, the Complaint must
8 establish that Plaintiff has a qualifying disability; that the
9 prison did not accommodate his disability, which prevented him from
10 enjoying the benefits of services, programs, or activities provided
11 to non-disabled prisoners; and that he was discriminated against
12 because of his disability. Accordingly, Plaintiff's ADA claim is
13 dismissed, with leave to amend.

14
15 **B. Plaintiff Fails To State An Excessive Force Claim**

16
17 The Complaint broadly claims that Steeb violated Plaintiff's
18 Eighth Amendment rights because he used excessive force while
19 handcuffing Plaintiff, which caused an unidentified "medical
20 injury." (Id. at 5-6).

21
22 The Eighth Amendment governs an inmate's excessive force claim
23 against prison officials. In such a claim, the relevant inquiry
24 is "whether force was applied in a good-faith effort to maintain
25 or restore discipline, or maliciously and sadistically to cause
26 harm." Hudson v. McMillian, 503 U.S. 1, 7 (1992); see also Martinez
27 v. Stanford, 323 F.3d 1178, 1184 (9th Cir. 2003) (same). Courts
28 considering a prisoner's Eighth Amendment claim "must ask both if

1 'the officials act[ed] with a sufficiently culpable state of mind'
2 and if the alleged wrongdoing was objectively 'harmful enough' to
3 establish a constitutional violation." Hudson, 503 U.S. at 8
4 (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991)). It is well
5 established that, in some circumstances, officers may restrain
6 inmates to maintain order. See Mendiola-Martinez v. Arpaio, 836
7 F.3d 1239, 1254 (9th Cir. 2016) ("[M]aintaining institutional
8 security and preserving internal order and discipline are essential
9 goals that may require limitation or retraction of the retained
10 constitutional rights of both convicted prisoners and pretrial
11 detainees.") (quoting Bell v. Wolfish, 441 U.S. 520, 546 (1979)
12 (internal quotation marks omitted)).

13
14 The Complaint fails to state an excessive force claim under
15 the Eighth Amendment because it does not establish that any
16 Defendant had the "culpable state of mind" to harm Plaintiff. The
17 Complaint appears to allege summarily that Steeb used excessive
18 force while handcuffing Plaintiff, but does not allege facts
19 showing that Steeb put Plaintiff in handcuffs "maliciously and
20 sadistically to cause harm." Hudson, 503 U.S. at 7. The mere fact
21 that Plaintiff was handcuffed and subsequently suffered some kind
22 of injury does not, by itself, establish that Steeb acted with a
23 "culpable state of mind" or even that the amount of force he used
24 against Plaintiff was actually "excessive". Accordingly, the
25 Complaint must be dismissed, with leave to amend.

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1 **C. Plaintiff Fails To State A Claim For Deliberate Indifference**
2 **To Serious Medical Needs**

3
4 The Complaint alleges that Defendants knew Plaintiff suffered
5 a "medical injury" and did nothing. (Compl. at 2, 5). It is
6 possible that Plaintiff is attempting to state a claim for
7 deliberate indifference to serious medical needs. However,
8 Plaintiff's deliberate indifference claim is defective.

9
10 To state a claim for unconstitutional health care services, a
11 prisoner must demonstrate that the defendants were "deliberately
12 indifferent" to his "serious medical needs." Jett v. Penner, 439
13 F.3d 1091, 1096 (9th Cir. 2006). To establish a "serious medical
14 need," the prisoner must show that "failure to treat [the]
15 prisoner's condition could result in further significant injury or
16 the 'unnecessary and wanton infliction of pain.'" Jett, 439 F.3d
17 at 1096 (citation omitted); see also Morgan v. Morgensen, 465 F.3d
18 1041, 1045 (9th Cir. 2006) (the existence of a serious medical need
19 is determined by an objective standard).

20
21 To establish "deliberate indifference" to such a need, a
22 prisoner must demonstrate: "(a) a purposeful act or failure to
23 respond to a prisoner's pain or possible medical need, and (b) harm
24 caused by the indifference." Jett, 439 F.3d at 1096. Deliberate
25 indifference "may appear when prison officials deny, delay or
26 intentionally interfere with medical treatment, or it may be shown
27 by the way in which prison physicians provide medical care." Id.
28 (citation omitted). Yet, an "inadvertent [or negligent] failure

1 to provide adequate medical care" alone does not state a claim.
2 Id. (citation omitted). The defendant must have been subjectively
3 aware of a serious risk of harm and must have consciously
4 disregarded that risk. See Farmer v. Brennan, 511 U.S. 825, 839
5 (1994). An "isolated exception" to a defendant's "overall
6 treatment" of a prisoner does not state a deliberate indifference
7 claim. Jett, 439 F.3d at 1096.

8
9 Here, Plaintiff does not allege sufficient facts to show that
10 his unidentified "medical injury" gave rise to a "serious medical
11 need." Even if Plaintiff's injury were serious, the Complaint does
12 not allege that Plaintiff failed to obtain medical treatment, or
13 that any medical treatment he did receive was constitutionally
14 inadequate. (See Compl. at 5-6). Plaintiff's conclusory
15 allegation that Defendants acted with "deliberate indifference"
16 does not state a claim under the Eighth Amendment. (Id. at 2);
17 Farmer, 511 U.S. at 835. Because the Complaint fails to state
18 facts to establish that Defendants deprived Plaintiff of treatment
19 for a serious medical need, Plaintiff's deliberate indifference
20 claim is dismissed, with leave to amend.

21
22 **D. Plaintiff Fails To State A Claim For Failure To Train And**
23 **Supervise**

24
25 Plaintiff appears to allege that Defendants Cabrerros, Bookmen,
26 Ingwerson, Norton, and Martinez are liable in their supervisory
27 capacity for Steeb's alleged violations because they "did nothing"
28 when Steeb injured him. The Complaint also asserts that Cabrerros

1 failed to properly supervise and train CMC staff on "how to handcuff
2 (ADA) inmates," and that Asuncion "had personal knowledge of her
3 staff['s] unusual behavior and refused to [follow] the (law)."
4 (Compl. at 5-6).

5
6 To demonstrate a civil rights action against a government
7 official, a plaintiff must show either the official's direct,
8 personal participation in the harm, or some sufficiently direct
9 connection between the official's conduct and the alleged
10 constitutional violation. See Starr v. Baca, 652 F.3d 1202, 1205-
11 06 (9th Cir. 2011). A supervising officer must personally take
12 some action against the plaintiff or "set in motion a series of
13 acts by others, or knowingly refused to terminate a series of acts
14 by others, which he knew or reasonably should have known, would
15 cause others to inflict the constitutional injury" on the
16 plaintiff. Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th
17 Cir. 1991) (internal quotation marks omitted); see also Starr, 409
18 F.3d at 1149 ("[A]cquiescence or culpable indifference" may
19 suffice to show that a supervisor "personally played a role in the
20 alleged constitutional violations.") (quoting Menotti v. City of
21 Seattle, 409 F.3d 1113, 1149 (9th Cir. 2005)).

22
23 Government officials may not be held liable for the
24 unconstitutional conduct of their subordinates just because a
25 subordinate caused a plaintiff harm. See Ashcroft v. Iqbal, 556
26 U.S. 662, 676 (2009). Rather, a supervisor may only be held
27 accountable "for his own culpable action or inaction in the
28 training, supervision, or control of his subordinates, for his

1 acquiescence in the constitutional deprivations of which the
2 complaint is made, or for conduct that showed a reckless or callous
3 indifference to the rights of others.” Preschooler II v. Clark
4 County Bd. of Trustees, 479 F.3d 1175, 1183 (9th Cir. 2007).

5
6 The Complaint does not allege facts sufficient to establish
7 that any Defendant’s failure to train or supervise Steeb led to
8 violations of Plaintiff’s constitutional rights. The Complaint
9 generally asserts that Defendants were aware of Steeb’s alleged
10 misconduct and of Plaintiff’s medical injury, but did “nothing.”
11 (Compl. at 5-6). Such a general assertion fails to explain how
12 Defendants played a role in either failing to stop, or setting in
13 motion, Steeb’s alleged wrongful conduct, or in failing to ensure
14 that Plaintiff received medical treatment for his injury.
15 Plaintiff must state specific facts showing what Defendants
16 personally did or did not do, and explain how their action or
17 inaction caused a violation of Plaintiff’s civil rights.
18 Accordingly, the Complaint must be dismissed, with leave to amend.

19
20 **E. Plaintiff Fails To State A Claim For Retaliation**

21
22 The Complaint vaguely alleges that Norton retaliated against
23 Plaintiff. (Compl. at 6). The Ninth Circuit has set forth the
24 minimum pleading requirements for a § 1983 claim alleging that
25 prison employees have retaliated against an inmate for exercising
26 a First Amendment right:

1 Within the prison context, a viable claim of First
2 Amendment retaliation entails five basic elements:
3 (1) An assertion that a state actor took some adverse
4 action against an inmate (2) because of (3) that
5 prisoner's protected conduct, and that such action
6 (4) chilled the inmate's exercise of his First Amendment
7 rights, and (5) the action did not reasonably advance a
8 legitimate correctional goal.

9
10 See Rhodes v. Robinson, 408 F.3d 559, 567-568 (9th Cir. 2005)
11 (footnote omitted). The prisoner must establish a specific link
12 between the alleged retaliation and the exercise of a
13 constitutional right. See Pratt v. Rowland, 65 F.3d 802, 807-08
14 (9th Cir. 1995).

15
16 The Complaint fails to state a retaliation claim. The
17 Complaint vaguely states that Norton "retaliated" against Plaintiff
18 without providing any additional facts showing what Norton did that
19 constituted retaliation. Accordingly, to the extent that Plaintiff
20 is attempting to raise a retaliation claim against Norton, the
21 claim must be dismissed, with leave to amend.

22
23 **F. Plaintiff Fails To State A Claim For A Fourteenth Amendment**
24 **Violation**

25
26 The Complaint appears to assert that Norton infringed on
27 Plaintiff's Fourteenth Amendment rights by "violat[ing] the laws,
28 regulation[s] and policy of the CDCR." (Compl. at 5). These

1 conclusory allegations, which do not even identify which policies
2 and regulations Norton purportedly violated, fail to state a claim
3 under the Fourteenth Amendment.
4

5 The mere violation of state prison protocols is not actionable
6 under § 1983. See Sandin v. Conner, 515 U.S. 472, 484 (1995). To
7 state a claim under § 1983, "a plaintiff must allege the violation
8 of a right secured by the Constitution and laws of the United
9 States, and must show that the alleged deprivation was committed
10 by a person acting under color of state law." West v. Atkins, 487
11 U.S. 42, 48 (1988) (emphasis added; citations omitted). The
12 Complaint fails to explain what Norton did to violate Plaintiff's
13 federal constitutional rights. Accordingly, Plaintiff's due
14 process claim is dismissed, with leave to amend.
15

16 **E. The Complaint Violates Rule 8**
17

18 Federal Rule of Civil Procedure 8(a)(2) requires that a
19 complaint contain "'a short and plain statement of the claim
20 showing that the pleader is entitled to relief,' in order to 'give
21 the defendant fair notice of what the . . . claim is and the
22 grounds upon which it rests.'" Bell Atlantic v. Twombly, 550 U.S.
23 544, 555 (2007) (citations omitted). Rule 8 may be violated when
24 a pleading "says too little" and "when a pleading says too much."
25 Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013) (emphasis in
26 original); see also Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.,
27 Inc., 637 F.3d 1047, 1058-59 (9th Cir. 2011) (a complaint violates
28

1 Rule 8 if a defendant would have difficulty understanding and
2 responding to the complaint).

3
4 The Complaint violates Rule 8 because Plaintiff does not
5 clearly identify the nature of each of his legal claims, the
6 specific facts giving rise to each individual claim, or the
7 specific Defendant or Defendants against whom each claim is
8 brought. For example, the Complaint broadly states that Ingwerson,
9 Castelo, Martinez, Norton, and Bookmen merely "knew" that
10 Plaintiff's Constitutional rights had been violated. (Compl. at
11 5). Similarly, the Complaint vaguely asserts that Martinez
12 "violated [a] Third Level Appeal Order." (Compl. at 6). Such
13 vague assertions do not allege specific facts to establish that
14 any of these individuals violated Plaintiff's civil rights.
15 Moreover, the Complaint does not name Castelo or Asuncion as
16 Defendants, but includes allegations suggesting that these
17 individuals violated Plaintiff's constitutional rights.
18 Additionally, the Complaint contains confusing allegations, such
19 as the reference to "attached documents," even though no additional
20 documents were filed with the Complaint, and likely did not need
21 to be. (See Compl. at 4-5, 8). Without more specific information
22 about what Plaintiff believes each Defendant specifically did to
23 violate his rights, Defendants cannot respond to the Complaint.
24 See Cafasso, 637 F.3d at 1058-59. Accordingly, the Complaint is
25 dismissed, with leave to amend.

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1 IV.

2 CONCLUSION

3
4 For the reasons stated above, the Complaint is dismissed with
5 leave to amend. If Plaintiff still wishes to pursue this action,
6 he is granted **thirty (30) days** from the date of this memorandum
7 and Order within which to file a First Amended Complaint. In any
8 amended complaint, Plaintiff shall cure the defects described
9 above.

10
11 **Furthermore, Plaintiff shall omit any claims or allegations**
12 **that are not reasonably related to the claims asserted in the**
13 **Complaint, but shall instead attempt to cure the deficiencies**
14 **addressed in this Order.** The First Amended Complaint, if any,
15 shall be complete in itself and shall bear both the designation
16 "First Amended Complaint" and the case number assigned to this
17 action. It shall not refer in any manner to the original Complaint.

18
19 In any amended complaint, Plaintiff should confine his
20 allegations to the operative facts supporting each of his claims.
21 Plaintiff is advised that pursuant to Federal Rule of Civil
22 Procedure 8(a), all that is required is a "short and plain statement
23 of the claim showing that the pleader is entitled to relief."
24 **Plaintiff is strongly encouraged to utilize the standard civil**
25 **rights complaint form when filing any amended complaint, a copy of**
26 **which is attached.** In any amended complaint, Plaintiff should
27 identify the nature of each separate legal claim and make clear
28 what specific factual allegations support his claims. Plaintiff

1 is strongly encouraged to keep his statements concise and to omit
2 irrelevant details. It is not necessary for Plaintiff to cite case
3 law or include legal argument. The Court notes that Plaintiff has
4 filed several actions at the same time and these actions appear to
5 lack substance in fact and law. Plaintiff is advised that filing
6 frivolous motions or actions may ultimately result in a
7 recommendation that he be barred from filing any action as a
8 vexatious litigant.

9
10 Plaintiff is explicitly cautioned that failure to timely file
11 a First Amended Complaint, or failure to correct the deficiencies
12 described above, will result in a recommendation that this action
13 be dismissed with prejudice for failure to prosecute and obey Court
14 orders pursuant to Federal Rule of Civil Procedure 41(b).
15 Plaintiff is further advised that if he no longer wishes to pursue
16 this action he may voluntarily dismiss it by filing a Notice of
17 Dismissal in accordance with Federal Rule of Civil Procedure
18 41(a)(1). A form Notice of Dismissal is attached for Plaintiff's
19 convenience.

20
21 DATED: August 15, 2017

22
23
24 /s/
25 SUZANNE H. SEGAL
UNITED STATES MAGISTRATE JUDGE

26 THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS, WESTLAW OR
27 ANY OTHER LEGAL DATABASE.
28