

6
UNITED STATES DISTRICT COURT
78
EASTERN DISTRICT OF CALIFORNIA
910
GEORGE JACOBS, 1:05-cv-01625-AWI-WMW (PC)
1112
Plaintiff,
v.
13
W.J. SULLIVAN et. al.,
Defendants.
1415
ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND
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17
I. SCREENING ORDER
18
George Jacobs (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis.
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Plaintiff filed his Complaint on December 22, 2005. (Doc. 1.) However, Plaintiff apparently
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only filed the caption page of his complaint, and so was given opportunity to file a first amended
complaint. (Doc. 4.) On March 28, 2006, Plaintiff filed the First Amended Complaint – which
is currently before the Court for screening. (Doc. 6.)
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A. Screening Requirement
22
The Court is required to screen complaints brought by prisoners seeking relief against a
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governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
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Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
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legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
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that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
27
§ 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
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1 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
2 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
3 1915(e)(2)(B)(ii).

4 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
5 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
6 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
7 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
8 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
9 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
10 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
11 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
12 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
13 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
14 (9th Cir. 1982)).

15 **B. Summary of Plaintiff’s First Amended Complaint**

16 Plaintiff is a state prisoner at Substance Abuse Treatment Facility and State Prison
17 (“SATF”) in Corcoran, California – where the acts he complains of occurred. Plaintiff names the
18 following defendants: Warden W.J. Sullivan; Sergeants D. Watson and D. Wilson; Lieutenant R.
19 Johnson; Captain M. Carrasco; ISU D. Abarquez; CCII D. Chapman; MTA J. Adams; RN Ms.
20 Alexander; and Correctional Officers D. Blankenship, M. Crotty, E. Granillo, C. Nelson, P.
21 Chan, S. McGregor, D. Jobb; and Does 1-3.

22 Plaintiff seeks monetary damages and injunctive relief in the form of immediate eye
23 treatment and possible surgery and dismissal of the guilty finding on the RVR in his prison
24 record.. Plaintiff appears to claim that he was subjected to unconstitutional retaliation and
25 excessive use of force at SATF.

26 Plaintiff is incarcerated and is representing himself in this action. Under these
27 circumstances, the Court is generally lenient in overlooking technical and other errors. However,
28 Plaintiff’s use of small print and failure to double space his sentences renders the First Amended

1 Complaint extremely difficult to read – bordering on virtually illegible. Plaintiff is required to
2 submit filings that are “clearly legible.” Local Rule 7-130(b). In submitting a second amended
3 complaint in compliance with this order, Plaintiff is required to write his letters in larger print
4 and to double space his sentences. Local Rule 7-130(c).

5 Plaintiff states some cognizable claims and may be able to amend to correct deficiencies
6 in his pleading so as to state additional cognizable claims. Plaintiff presents a chronological
7 rendition of events without specifying which of his constitutional rights he feels were violated.
8 Plaintiff does generally use words and/or phrases that are associated with specific constitutional
9 violations and it is on that basis that the Court provides the following legal standards for
10 guidance if/when Plaintiff chooses to file a second amended complaint. If Plaintiff intended to
11 raise constitutional violations other than as addressed herein, he would do well to specify and/or
12 clearly identify them in any second amended complaint. The Court provides what appear to be
13 the applicable standards for Plaintiff’s claims for relief and leave to file a second amended
14 complaint.

15 **C. Pleading Requirements**

16 **1. *Federal Rule of Civil Procedure 8(a)***

17 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
18 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
19 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
20 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
21 Civ. Pro. 8(a). “Such a statement must simply give the defendant fair notice of what the
22 plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. A court
23 may dismiss a complaint only if it is clear that no relief could be granted under any set of facts
24 that could be proved consistent with the allegations. Id. at 514. “The issue is not whether a
25 plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support
26 the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and
27 unlikely but that is not the test.” Jackson v. Carey, 353 F.3d 750, 755 (9th Cir. 2003) (quoting
28 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)); see also Austin v. Terhune, 367 F.3d 1167, 1171

1 (9th Cir. 2004) (“Pleadings need suffice only to put the opposing party on notice of the claim” (quoting Fontana v. Haskin, 262 F.3d 871, 977 (9th Cir. 2001))). However, “the liberal
2 pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490
3 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply
4 essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin.,
5 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir.
6 1982)).

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8 ***2. Federal Rule of Civil Procedure 18(a)***

9 “The controlling principle appears in Fed.R.Civ.P. 18(a) ‘A party asserting a claim to
10 relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as
11 independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has
12 against an opposing party.’ Thus multiple claims against a single party are fine, but Claim A
13 against Defendant 1 should not be joined with unrelated Claim B against Defendant 2. Unrelated
14 claims against different defendants belong in different suits, not only to prevent the sort of
15 morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners
16 pay the required filing fees-for the Prison Litigation Reform Act limits to 3 the number of
17 frivolous suits or appeals that any prisoner may file without prepayment of the required fees. 28
18 U.S.C. § 1915(g).” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

19 Plaintiff is advised that if he chooses to file a second amended complaint, and fails to
20 comply with Rule 18(a), the Court will count all frivolous/noncognizable unrelated claims that
21 are dismissed therein as strikes such that he may be barred from filing in forma pauperis in the
22 future.

23

24 ***3. Linkage Requirement***

25 The Civil Rights Act under which this action was filed provides:

26 Every person who, under color of [state law] . . . subjects, or causes
27 to be subjected, any citizen of the United States . . . to the
deprivation of any rights, privileges, or immunities secured by the
Constitution . . . shall be liable to the party injured in an action at
law, suit in equity, or other proper proceeding for redress.

28 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between

1 the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. See
2 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
3 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a
4 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
5 in another’s affirmative acts or omits to perform an act which he is legally required to do that
6 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th
7 Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each named
8 defendant with some affirmative act or omission that demonstrates a violation of Plaintiff’s
9 federal rights.

10 **D. Claims for Relief**

11 **1. Eighth Amendment – Cruel & Unusual Punishment**

12 **A. Excessive Force**

13 The Eighth Amendment prohibits those who operate our prisons from using “excessive
14 physical force against inmates.” Farmer v. Brennan, 511 U.S. 825 (1994); Hoptowit v. Ray, 682
15 F.2d 1237, 1246, 1250 (9th Cir.1982) (prison officials have “a duty to take reasonable steps to
16 protect inmates from physical abuse”); see also Vaughan v. Ricketts, 859 F.2d 736, 741 (9th
17 Cir.1988), cert. denied, 490 U.S. 1012 (1989) (“prison administrators’ indifference to brutal
18 behavior by guards toward inmates [is] sufficient to state an Eighth Amendment claim”). As
19 courts have succinctly observed, “[p]ersons are sent to prison as punishment, not *for*
20 punishment.” Gordon v. Faber, 800 F.Supp. 797, 800 (N.D.Iowa 1992) (citation omitted), *aff’d*,
21 973 F.2d 686 (8th Cir.1992). “Being violently assaulted in prison is simply not ‘part of the
22 penalty that criminal offenders pay for their offenses against society.’” Farmer, 511 U.S. at 834,
23 114 S.Ct. at 1977 (quoting Rhodes, 452 U.S. at 347).

24 Plaintiff states cognizable claims against Watson, Chan, McGregor, Carrasco, Johnson,
25 Jobb, Blakenship, Crotty, Nelson, and Granillo of using excessive force against him in the
26 unnecessary cell extraction and subsequent deluge of o.c. pepper spray.

27 **b. Deliberate Indifference to Serious Medical Needs**

28 Plaintiff appears to allege that Watson MTA J. Adams, and Dr. Doe #1 were deliberately

1 indifferent to his serious medical needs.

2 Where a prisoner's Eighth Amendment claim is one of inadequate medical care, the
3 prisoner must allege and prove "acts or omissions sufficiently harmful to evidence deliberate
4 indifference to serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). Such a
5 claim has two elements: "the seriousness of the prisoner's medical need and the nature of the
6 defendant's response to that need." McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir.1991). A
7 medical need is serious "if the failure to treat the prisoner's condition could result in further
8 significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin, 974 F.2d at
9 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious medical need include "the
10 presence of a medical condition that significantly affects an individual's daily activities." Id. at
11 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the
12 objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S.
13 825, 834 (1994).

14 If a prisoner establishes the existence of a serious medical need, he or she must then show
15 that prison officials responded to the serious medical need with deliberate indifference. Farmer,
16 511 U.S. at 834. Deliberate indifference can be manifested by prison guards intentionally
17 denying or delaying access to medical care or intentionally interfering with the treatment once
18 prescribed. Estelle, 429 U.S. at 104-05. "However, the officials' conduct must constitute ' "
19 "'unnecessary and wanton infliction of pain' " ' before it violates the Eighth Amendment. Hallett
20 v. Morgan 296 F.3d 732, 745 (2002) quoting Estelle, 429 U.S. at 104, 97 S.Ct. 285 (quoting
21 Gregg v. Georgia, 428 U.S. 153, 173 (1976)); see also Frost v. Agnos, 152 F.3d 1124, 1128 (9th
22 Cir.1998). The failure of prison officials to decontaminate an inmate following the use of pepper
23 spray may support a claim for under section 1983 for deliberate indifference to the inmate's
24 serious medical needs. Clement v. Gomez, 298 F.3d 898, 904-06 (9th Cir. 2002).

25 Plaintiff states a cognizable claim against Watson for intentionally and unnecessarily
26 spraying his naked body with o.c. pepper spray while he was in a holding cage and then refusing
27 to call for medical assistance until Plaintiff agreed to let Watson completely decontaminate him
28 by spraying off all evidence of the incident with a garden hose.

1 However, Plaintiff does not state cognizable claims against MTA Adams and Dr. John
2 Doe #1 for asking him questions and examining him after Watson had sprayed away all evidence
3 of his being pepper sprayed. Dr. John Doe #1 even asked Watson to get Plaintiff a blanket since
4 Plaintiff was shivering from sitting in the puddle of water. Plaintiff does not show that MTA
5 Adams and Dr. John Doe #1 knew of his serious medical needs and were deliberately indifferent
6 thereto.

7 **2. Fourteenth Amendment**

8 **a. Due Process**

9 Plaintiff appears to complain that Abarquez and John Doe #2 violated Plaintiff's rights to
10 due process. (Doc. 6, pg. 9.)

11 The Due Process Clause of the Fourteenth Amendment protects prisoners from being
12 deprived of life, liberty, or property without due process of law. Wolff v. McDonnell, 418 U.S.
13 539, 556 (1974). "Prison disciplinary proceedings are not part of a criminal prosecution, and the
14 full panoply of rights due a defendant in such proceedings does not apply." Wolff v. McDonnell,
15 418 U.S. 539, 556 (1974). With respect to prison disciplinary proceedings, the minimum
16 procedural requirements that must be met are: (1) written notice of the charges; (2) at least 24
17 hours between the time the prisoner receives written notice and the time of the hearing, so that
18 the prisoner may prepare his defense; (3) a written statement by the fact finders of the evidence
19 they rely on and reasons for taking disciplinary action; (4) the right of the prisoner to call
20 witnesses in his defense, when permitting him to do so would not be unduly hazardous to
21 institutional safety or correctional goals; and (5) legal assistance to the prisoner where the
22 prisoner is illiterate or the issues presented are legally complex. Id. at 563-71. As long as the
23 five minimum Wolff requirements are met, due process has been satisfied. Walker v. Sumner,
24 14 F.3d 1415, 1420 (9th Cir. 1994). "Some evidence" must support the decision of the hearing
25 officer. Superintendent v. Hill, 472 U.S. 445, 455 (1985). The standard is not particularly
26 stringent and the relevant inquiry is whether "there is *any* evidence in the record that could
27 support the conclusion reached . . ." Id. at 455-56 (emphasis added).

28 Plaintiff fails to state a cognizable claim as he does not allege sufficient facts for the

1 Court to ascertain whether a liberty interest was infringed upon. Further, Plaintiff does not allege
2 facts to address all of the Wolff requirements.

3 **3. First Amendment**

4 **a. Retaliation**

5 Plaintiff appears to allege that all of the defendants retaliated against him.

6 Allegations of retaliation against a prisoner's First Amendment rights to speech or to
7 petition the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532
8 (9th Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v.
9 Rowland, 65 F.3d 802, 807 (9th Cir. 1995). "Within the prison context, a viable claim of First
10 Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some
11 adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that
12 such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did
13 not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-
14 68 (9th Cir. 2005). An allegation of retaliation against a prisoner's First Amendment right to file
15 a prison grievance is sufficient to support a claim under section 1983. Bruce v. Ylst, 351 F.3d
16 1283, 1288 (9th Cir. 2003). Adverse action is action that "would chill a person of ordinary
17 firmness" from engaging in that activity. Pinard v. Clatskanie School Dist., 467 F.3d 755, 770
18 (9th Cir. 2006); White v. Lee, 227 F.3d 1214, 1228 (9th Cir. 2000); see also Lewis v. Jacks, 486
19 F.3d 1025 (8th Cir. 2007); see also Thomas v. Eby, 481 F.3d 434, 440 (6th Cir. 2007); Bennett v.
20 Hendrix, 423 F.3d 1247, 1250-51 (11th Cir. 2005); Constantine v. Rectors & Visitors of George
21 Mason Univ., 411 F.3d 474, 500 (4th Cir. 2005); Gill v. Pidlypchak, 389 F.3d 379, 381 (2d Cir.
22 2004); Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001).

23 Both litigation in court and filing inmate grievances are protected activities and it is
24 impermissible for prison officials to retaliate against inmates for engaging in these activities.
25 However, not every allegedly adverse action will be sufficient to support a claim under section
26 1983 for retaliation. In the prison context, cases in this Circuit addressing First Amendment
27 retaliation claims involve situations where the action taken by the defendant was clearly adverse
28 to the plaintiff. Rhodes, 408 F.3d at 568 (arbitrary confiscation and destruction of property,

1 initiation of a prison transfer, and assault in retaliation for filing grievances); Austin, 367 F.3d at
2 1171 (retaliatory placement in administrative segregation for filing grievances); Bruce, 351 F.3d
3 at 1288 (retaliatory validation as a gang member for filing grievances); Hines v. Gomez, 108
4 F.3d 265, 267(9th Cir. 1997) (retaliatory issuance of false rules violation and subsequent finding
5 of guilt); Pratt, 65 F.3d at 806 (retaliatory prison transfer and double-cell status); Valandingham,
6 866 F.2d at 1138 (inmate labeled a snitch and approached by other inmates and threatened with
7 harm as a result); Rizzo, 778 F.2d at 530-32 (retaliatory reassignment out of vocational class and
8 transfer to a different prison).

9 Plaintiff states a cognizable retaliation claim against Watson, Johnson, Carrasco,
10 Blakenship, Crotty, Granillo, Nelson, Chan, McGregor and Jobb. However, Plaintiff does not
11 state a valid retaliation claim against Sullivan, Wilson, Abarquez, Chapman, Adams, Alexander,
12 and John Does 1-3 as he fails to show that they took any adverse action against him.

13 **4. Conspiracy**

14 Plaintiff variously uses words such as “conspired,” “conspiracy,” and “conspirator”
15 throughout his First Amended Complaint.

16 A claim brought for violation of section 1985(3) requires “four elements: (1) a
17 conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of
18 persons of the equal protection of the laws, or of equal privileges and immunities under the laws;
19 and (3) an act in furtherance of this conspiracy; (4) whereby a person is either injured in his
20 person or property or deprived of any right or privilege of a citizen of the United States.” Sever
21 v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992) (citation omitted). A racial, or
22 perhaps otherwise class-based, invidiously discriminatory animus is an indispensable element of
23 a section 1985(3) claim. Sprewell v. Golden State Warriors, 266 F.3d 979, 989 (9th Cir. 2001)
24 (quotations and citation omitted).

25 A claim for violation of section 1985(3) requires the existence of a conspiracy and an act
26 in furtherance of the conspiracy. Holgate v. Baldwin, 425 F.3d 671, 676 (9th Cir. 2005) (citation
27 omitted). A mere allegation of conspiracy is insufficient to state a claim. Id. at 676-77.

28 Any conspiracy claim that Plaintiff might have intended to allege is not cognizable as he

1 does little other than suggest that the defendants conspired together. Further, Plaintiff does not
2 show any racial or class-based invidiously discriminatory animus on the part of any of the
3 defendants.

4 **5. Supervisor Liability**

5 Plaintiff names the following supervisory defendants: Sullivan, Watson, Wilson, Johnson,
6 Carrasco, Abarquez, Chapman, and Adams.

7 Supervisory personnel are generally not liable under section 1983 for the actions of their
8 employees under a theory of respondeat superior and, therefore, when a named defendant holds a
9 supervisory position, the causal link between him and the claimed constitutional violation must
10 be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v.
11 Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim
12 for relief under section 1983 based on a theory of supervisory liability, plaintiff must allege some
13 facts that would support a claim that supervisory defendants either: personally participated in the
14 alleged deprivation of constitutional rights; knew of the violations and failed to act to prevent
15 them; or promulgated or “implemented a policy so deficient that the policy ‘itself is a repudiation
16 of constitutional rights’ and is ‘the moving force of the constitutional violation.’” Hansen v.
17 Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); Taylor v. List, 880 F.2d
18 1040, 1045 (9th Cir. 1989). Although federal pleading standards are broad, some facts must be
19 alleged to support claims under section 1983. See Leatherman v. Tarrant County Narcotics Unit,
20 507 U.S. 163, 168 (1993).

21 Except as otherwise discussed above, Plaintiff has not alleged any facts indicating that
22 any of the defendants personally participated in the alleged deprivation of constitutional rights
23 and/or knew of the violations and failed to act to prevent them. Further, Plaintiff does not state
24 allegations to show that any of the supervisory defendants promulgated or “implemented a policy
25 so deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving

1 force of the constitutional violation.”” Hansen v. Black at 646.¹

2 **6. Injunctive Relief**

3 Plaintiff requests injunctive relief in the form of immediate eye treatment and possible
4 surgery and dismissal of the guilty finding on the RVR in his prison record..

5 18 U.S.C. § 3626(a)(1)(A) provides in relevant part, “Prospective relief in any civil action
6 with respect to prison conditions shall extend no further than necessary to correct the violation of
7 the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any
8 prospective relief unless the court finds that such relief is narrowly drawn, extends no further
9 than necessary to correct the violation of the Federal right, and is the least intrusive means
10 necessary to correct the violation of the Federal right.” Plaintiff fails to state a cognizable claim
11 for violation of any of his Federal rights in relation to his eye (for which he seeks treatment and
12 possible surgery).

13 Further, the Ninth Circuit has not found that prisoners have an independent right,
14 grounded in the Due Process Clause, to an accurate prison record. Hernandez v. Johnston, 833
15 F.2d 1316, 1319 (9th Cir. 1987). As previously stated, liberty interests created by prison
16 regulations are limited to freedom from restraint which “imposes atypical and significant
17 hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin at 484.
18 Plaintiff has alleged no facts with regard to the information that he seeks to have expunged or
19 corrected in his central file that establish the existence of a liberty interest entitling Plaintiff to
20 due process. Any concern that the information will be used against Plaintiff in the future is
21 premature.

22 Thus, there is no need for the Court to address Plaintiff’s request for prospective
23 injunctive relief at this time.

24

25 ¹ An unconstitutional policy cannot be proved by a single incident “unless proof of the
26 incident includes proof that it was caused by an existing, unconstitutional policy.” City of
27 Oklahoma City v. Tuttle, 471 U.S. 808, 823-24 (1985); a single incident supplies a “policy” only
28 when the decision-maker has “final authority” to establish the policy in question. Collins v. City
of San Diego, 841 F.2d 337, 341 (9th Cir. 1988), citing Pembauer v. City of Cincinnati, 475 U.S.
469 (1986). Plaintiff alleges no such facts here.

1 **II. CONCLUSION**

2 For the reasons set forth above, Plaintiff's First Amended Complaint is dismissed, with
3 leave to file a second amended complaint within thirty days. If Plaintiff needs an extension of
4 time to comply with this order, Plaintiff shall file a motion seeking an extension of time no later
5 than thirty days from the date of service of this order.

6 Plaintiff must demonstrate in his complaint how the conditions complained of have
7 resulted in a deprivation of Plaintiff's constitutional rights. See Ellis v. Cassidy, 625 F.2d 227
8 (9th Cir. 1980). The complaint must allege in specific terms how each named defendant is
9 involved. There can be no liability under section 1983 unless there is some affirmative link or
10 connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423
11 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588
12 F.2d 740, 743 (9th Cir. 1978).

13 Plaintiff's second amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state
14 what each named defendant did that led to the deprivation of Plaintiff's constitutional or other
15 federal rights. Hydrick v. Hunter, 500 F.3d 978, 987-88 (9th Cir. 2007). Although accepted as
16 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative
17 level” Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

18 Plaintiff is further advised that a second amended complaint supercedes the original
19 complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814
20 F.2d 565, 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or
21 superceded pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged
22 in an original complaint which are not alleged in an amended complaint are waived.” King, 814
23 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
24 Forsyth, 114 F.3d at 1474.

25 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
26 by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff
27 may not change the nature of this suit by adding new, unrelated claims in his second amended
28 complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

Based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff's First Amended Complaint is dismissed, with leave to amend;
2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
3. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:
 - a. File a second amended complaint curing the deficiencies identified by the Court in this order, or
 - b. Notify the Court in writing that he does not wish to file a second amended complaint and wishes to proceed only on the claims identified by the Court as viable/cognizable in this order; and
4. If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order and for failure to state a claim.

IT IS SO ORDERED.

Dated: May 1, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE