

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MICHAEL LUCAS, CASE NO. 1:08-cv-00515-AWI WMW PC

Plaintiff, ORDER DISMISSING COMPLAINT, WITH
v. LEAVE TO FILE AMENDED COMPLAINT
WITHIN THIRTY DAYS

JAMES TILTON, et al., (Doc. 1)

Defendants.

Screening Order**I. Screening Requirement**

Plaintiff Michael Lucas is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 15, 2008.

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

“Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.

1 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
2 plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a).
3 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
4 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
5 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
6 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
7 of the claim that were not initially pled.” Brunsv. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
8 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

9 **II. Plaintiff’s Claims**

10 To warrant relief under the Civil Rights Act, a plaintiff must allege and show that defendant’s
11 acts or omissions caused the deprivation of his constitutionally protected rights. Leer v. Murphy,
12 844 F.2d 628, 633 (9th Cir. 1993). In order to state a claim under § 1983, a plaintiff must allege
13 that: (1) a person was acting under color of state law at the time the complained of act was
14 committed; and (2) that person’s conduct deprived plaintiff of rights, privileges or immunities
15 secured by the Constitution or laws of the United States. Paratt v. Taylor, 451 U.S. 527, 535 (1981).

16 The events at issue in this action occurred at Avenal State Prison, where Plaintiff is currently
17 housed. Plaintiff is seeking accommodation to “allow him to fulfill his Islamic duties and make
18 pregnant his wife.” Plaintiff specifically seeks accommodation for either a conjugal visit or to have
19 a semen sample of his sent to his wife. It is well settled that prisoners have no constitutional right
20 while incarcerated to contact visits or conjugal visits. Gerber v. Hickman, 291 F.3d 617, 621 (9th
21 Cir. 2002), citing Kentucky Dep’t. of Corrs. V. Thompson, 490 U.S. 454, 460 (1989)(no due process
22 right to unettered visititation); Hernandez v. Coughlin, 18 F.3d 133, 137 (2nd Cir. 1994)(no
23 constitutional right to conjugal visits). The fact that California prison officials may choose to permit
24 some inmates the privilege of conjugal visits is simply irrelevant to whether there is a constitutional
25 right to procreate while in prison. Gerber, 291 F.3d at 621. Plaintiff has not alleged any facts
26 indicating that he has been deprived of a protected interest.

27
28 **III. Conclusion and Order**

1 The Court has screened Plaintiff's complaint and finds that it does not state any claims upon
2 which relief may be granted under section 1983. The Court will provide Plaintiff with the
3 opportunity to file an amended complaint curing the deficiencies identified by the Court in this order.
4 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not
5 change the nature of this suit by adding new, unrelated claims in his amended complaint. George,
6 507 F.3d at 607 (no "buckshot" complaints).

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

12 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
13 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
14 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
15 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an original
16 complaint which are not alleged in an amended complaint are waived." King, 814 F.2d at 567 (citing
17 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
18 1474.

19 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 20 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
- 21 2. The Clerk's Office shall send Plaintiff a complaint form;
- 22 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
23 amended complaint;
- 24 4. Plaintiff may not add any new, unrelated claims to this action via his amended
25 complaint and any attempt to do so will result in an order striking the amended
26 complaint; and
- 27 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
28 action be dismissed, with prejudice, for failure to state a claim.

1 IT IS SO ORDERED.

2 Dated: January 14, 2009

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/s/ **William M. Wunderlich**
UNITED STATES MAGISTRATE JUDGE