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6 **UNITED STATES DISTRICT COURT**
78 EASTERN DISTRICT OF CALIFORNIA
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10 LOUIS BRANCH,

CASE NO. 1:08-cv-01655-WMW PC

11 v. Plaintiff,

ORDER REQUIRING PLAINTIFF EITHER TO
FILE AMENDED COMPLAINT OR TO
NOTIFY COURT OF WILLINGNESS TO
PROCEED ONLY ON CLAIMS FOUND TO
BE COGNIZABLE

12 N. GRANNIS, et al.,

13 Defendants.

(Doc. 1)

14 RESPONSE DUE WITHIN THIRTY DAYS
15 /16 Plaintiff Louis Branch (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis
17 in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is in the custody of the California
18 Department of Corrections and Rehabilitation and was incarcerated at Avenal State Prison (“ASP”)
19 when the events in his complaint took place. Plaintiff is suing under section 1983 for the violation
20 of his rights under the First, Eighth and Fourteenth Amendments. Plaintiff names N. Grannis (chief
21 of inmate appeals), K. Mendoza-Powers (warden, ASP), A. Mancinas (classification and parole
22 representative, ASP), D. Umphenour (officer, ASP), and Does 1 and 2 (officers, ASP) as defendants.
23 For the reasons set forth below, Plaintiff will be given the opportunity to file an amended complaint
24 or to proceed only on claims found cognizable in this order.25 **I. Screening Requirement**26 The Court is required to screen complaints brought by prisoners seeking relief against a
27 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
28 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).
3 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
4 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
5 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
7 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
8 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
9 plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a).
10 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
11 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
12 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
13 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
14 of the claim that were not initially pled.” Brunsv. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
15 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

16 **II. Background**

17 On July 11, 2004, Plaintiff was attacked and stabbed four times by inmate gang members at
18 ASP. Defendants Umphenour, Doe 1 and Doe 2 were present during the attack but did nothing to
19 prevent or stop the attack.

20 **III. Discussion**

21 **A. First Amendment**

22 Plaintiff alleges Defendants retaliated against him in violation of the First Amendment. In
23 the prison context, allegations of retaliation against a prisoner’s First Amendment rights to speech
24 or to petition the government may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527,
25 532 (9th Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v.
26 Rowland, 65 F.3d 802, 807 (9th Cir. 1995). “[A] viable claim of First Amendment retaliation entails
27 five basic elements: (1) An assertion that a state actor took some adverse action against an inmate
28 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s

1 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate
2 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). An allegation of
3 retaliation against a prisoner’s First Amendment right to file a prison grievance is sufficient to
4 support a claim under section 1983. Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003).

5 Plaintiff has not alleged that any adverse action was taken against him because of his
6 protected conduct. Plaintiff’s complaint is insufficient because it fails to explicitly link together all
7 of his factual allegations. Plaintiff alleges that Defendants Mendoza-Powers and Mancinas
8 “allow[ed] five intra-facility transfers 2 weeks prior to the attempted murder in violation of clearly
9 established classification protocols.” Plaintiff has not adequately demonstrated how the intra-facility
10 transfers constitute “adverse action”. Plaintiff does not allege how the intra-facility transfers were
11 related to the attack on Plaintiff: he does not allege that the transferred inmates were the same
12 inmates that attacked him or that the transfers had otherwise caused the attack against Plaintiff.

13 Plaintiff alleges that Defendant Grannis retaliated against Plaintiff. Plaintiff alleges that
14 Defendant Grannis “failed to correct the violations and/or at least [] conduct a minimal investigation
15 of[the] grievance/complaint.” (Compl. 7.) Plaintiff has not alleged that Defendant Grannis refused
16 to correct the violations or conduct an investigation because of Plaintiff’s protected conduct.
17 Therefore, Plaintiff has not alleged a cognizable retaliation claim against Defendant Grannis.

18 Plaintiff alleges that Defendant Umphenour retaliated against Plaintiff by “vandalizing,
19 destroying, and distributing my legal/personal property to my inmate assailants”. (Compl. 6.)
20 Plaintiff has not alleged that Defendant Umphenour did so because of Plaintiff’s protected conduct.
21 Therefore, Plaintiff has not alleged a cognizable retaliation claim against Defendant Umphenour.

22 **B. Eighth Amendment**

23 Plaintiff alleges Defendants violated his rights under the Eighth Amendment. The Eighth
24 Amendment prohibits the imposition of cruel and unusual punishments and “embodies ‘broad and
25 idealistic concepts of dignity, civilized standards, humanity and decency.’” Estelle v. Gamble, 429
26 U.S. 97, 102 (1976) (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)). A prison
27 official violates the Eighth Amendment only when two requirements are met: (1) the objective
28 requirement that the deprivation is “sufficiently serious”, Farmer v. Brennan, 511 U.S. 825, 834

1 (1994) (quoting Wilson v. Seiter, 501 U.S. 294, 298 (1991), and (2) the subjective requirement that
2 the prison official has a “sufficiently culpable state of mind”, Id. (quoting Wilson, 501 U.S. at 298).
3 The objective requirement that the deprivation be “sufficiently serious” is met where the prison
4 official’s act or omission results in the denial of “the minimal civilized measure of life’s necessities”.
5 Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). The subjective requirement that the
6 prison official has a “sufficiently culpable state of mind” is met where the prison official acts with
7 “deliberate indifference” to inmate health or safety. Id. (quoting Wilson, 501 U.S. at 302-303). A
8 prison official acts with deliberate indifference when he/she “knows of and disregards an excessive
9 risk to inmate health or safety”. Id. at 837. “[T]he official must both be aware of facts from which
10 the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the
11 inference.” Id.

12 Plaintiff alleges Defendants Umphenour, Doe 1, and Doe 2 violated Plaintiff’s right under
13 the Eighth Amendment to be free from cruel and unusual punishment by their failure to prevent other
14 inmate gang members from stabbing Plaintiff. “Prison officials have a duty to take reasonable steps
15 to protect inmates from physical abuse.” Hoptowit v. Ray, 682 F.2d 1237, 1250-51 (9th Cir. 1982).
16 To establish a violation of this duty, the prisoner must establish that prison officials were
17 “deliberately indifferent” to serious threats to the inmate’s safety. See Farmer v. Brennan, 511 U.S.
18 825, 834 (1994). To demonstrate that a prison official was deliberately indifferent to a serious threat
19 to the inmate’s safety, the prisoner must show that “the official [knew] of and disregard[ed] an
20 excessive risk to inmate . . . safety; the official must both be aware of facts from which the inference
21 could be drawn that a substantial risk of serious harm exists, and [the official] must also draw the
22 inference.” Farmer, 511 U.S. at 837.

23 Plaintiff alleges that Defendants Umphenour, Doe 1, and Doe 2 “stood by and did nothing”
24 while Plaintiff was attacked by inmate gang members and stabbed four times. (Compl. 6.) Plaintiff
25 has sufficiently alleged that Defendants were deliberately indifferent to a serious threat to his safety
26 and states a cognizable claim against Defendants Umphenour, Doe 1, and Doe 2.

27 Plaintiff alleges that Defendants Mendoza-Powers, Mancinas, and Grannis are also liable for
28 deliberate indifference to a threat to his safety. Plaintiff alleges that Defendant Mendoza-Powers and

1 Mancinas “unnecessarily delay[ed] and ignor[ed] Plaintiff’s formal appeals, complaints and letters
2 admonishing them of my exposure to a substantial risk of serious harm.”¹ (Compl. 6.) Plaintiff also
3 alleges that Defendant Grannis processed Plaintiff’s complaints and failed to protect Plaintiff.
4 Plaintiff has sufficiently alleged that Defendants had knowledge of the serious threat to Plaintiff’s
5 safety and were deliberately indifferent by failing to take steps to prevent the attack. Therefore,
6 Plaintiff states a cognizable claim against Defendants Mendoza-Powers, Mancinas and Grannis.

7 **C. Fourteenth Amendment**

8 Plaintiff alleges Defendants Mendoza-Powers, Mancinas, Umphenour, and Grannis violated
9 his rights under the Due Process Clause of the Fourteenth Amendment. “[W]here a particular
10 amendment provides an explicit textual source of constitutional protection against a particular sort
11 of government behavior, that Amendment, not the more generalized notion of substantive due
12 process, must be the guide for analyzing a plaintiff’s claims.” Patel v. Penman, 103 F.3d 868, 874
13 (9th Cir. 1996) (citations, internal quotations, and brackets omitted). Plaintiff’s rights are explicitly
14 protected under the Eighth Amendment and it is not necessary to analyze Plaintiff’s claim separately
15 under the Fourteenth Amendment. Therefore, Plaintiff’s claim proceeds as an Eighth Amendment
16 claim, see supra Part III.B, and Plaintiff fails to state a separate claim under the Fourteenth
17 Amendment.

18 **IV. Conclusion and Order**

19 Plaintiff’s complaint states cognizable claims against Defendants Umphenour, Mendoza-
20 Powers, Mancinas, Grannis, Doe 1, and Doe 2 for violating the Eighth Amendment. Plaintiff’s
21 complaint fails to state claims against any other defendants. The Court will provide Plaintiff with
22 the opportunity to file an amended complaint curing the deficiencies identified by the Court in this
23 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature
24 of this suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d
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26 ¹Plaintiff’s complaint is ambiguous as to whether he filed the inmate appeals after the stabbing incident
27 occurred, or before the stabbing incident occurred. There is no constitutional violation if Plaintiff is alleging that
28 Defendants ignored or denied inmate appeals that Plaintiff filed after the constitutional violation had already
occurred. The court resolves the ambiguity in Plaintiff’s favor and will construe Plaintiff’s allegations as occurring
at a point in time when Defendants had the opportunity to prevent the stabbing.

1 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

2 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding only
3 on the claims identified in this order as cognizable, Plaintiff may so notify the Court in writing, and
4 the Court will issue a recommendation for dismissal of the other claims and defendants, and will
5 forward Plaintiff four (4) summonses and four (4) USM-285 forms for completion and return. Upon
6 receipt of the forms, the Court will direct the United States Marshal to initiate service of process.

7 If Plaintiff opts to amend, his amended complaint should be brief, Fed. R. Civ. P. 8(a), but
8 must state what each named defendant did that led to the deprivation of Plaintiff’s constitutional or
9 other federal rights, Hydrick v. Hunter, 500 F.3d 978, 987-88 (9th Cir. 2007). With respect to
10 exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P. 10(c), they are not
11 necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). In other words, it is not
12 necessary at this stage to submit evidence to prove the allegations in Plaintiff’s complaint because
13 at this stage Plaintiff’s factual allegations will be accepted as true. Although accepted as true, the
14 “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level”,
15 Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations omitted), meaning Plaintiff
16 must provide enough allegations in his complaint to demonstrate why he is entitled to the relief that
17 he seeks.

18 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint.
19 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
20 (9th Cir. 1987). The amended complaint must be “complete in itself without reference to the prior
21 or 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 F.2d
23 at 567 (citing London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth,
24 114 F.3d at 1474. In other words, even the claims that were properly stated in the original complaint
25 must be completely stated again in the amended complaint.

26 Based on the foregoing, it is HEREBY ORDERED that:

27 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
28 2. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:

- a. File an 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 an amended complaint and wishes to proceed only against Defendants Umphenour, Mendoza-Powers, Mancinas, Grannis, Doe 1, and Doe 2 for violating the Eighth Amendment; and

3. If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order.

IT IS SO ORDERED.

Dated: April 7, 2009

/s/ William M. Wunderlich
UNITED STATES MAGISTRATE JUDGE