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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CANDELARIO ANTONIO,

CASE NO. 1:09-cv-00764-AWI-YNP PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO FILE AMENDED COMPLAINT
WITHIN 30 DAYS

v.

STEPHENS, et al.,

(Doc. 1)

Defendants.

Plaintiff Candelario Antonio (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is in the custody of the California Department of Corrections and Rehabilitation and was incarcerated at California Substance Abuse Treatment Facility and State Prison in Corcoran, California (“CSATF/SP”) at the time the events in his complaint took place. Plaintiff names “Stephens”, a correctional officer at CSATF/SP as defendant. For the reasons set forth below, Plaintiff’s complaint is dismissed for failure to state a claim. Plaintiff will be given an opportunity to file an amended complaint within 30 days.

I. Screening Requirement

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).

1 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
2 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
3 claim upon which relief may be granted.” 28 U.S.C. § 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 U.S.
6 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
7 plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a).
8 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
9 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
10 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
11 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
12 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
13 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

14 **II. Background**

15 Plaintiff’s sparse statement of his claim is that “Stephens did not want to give me my legal
16 [material]. Know[ing] I had a [imminent] court date deadline.” (Compl. 3.)

17 **III. Discussion**

18 **A. Access to Courts**

19 Plaintiff does not specify what rights Defendant Stephens infringed. The Court construes
20 Plaintiff’s claim as alleging interference with Plaintiff’s constitutional right of access to the courts.
21 Prisoners have a constitutional right of access to the courts. See Lewis v. Casey, 518 U.S. 343, 346
22 (1996); Bounds v. Smith, 430 U.S. 817, 821 (1977); Bradley v. Hall, 64 F.3d 1276, 1279 (9th Cir.
23 1995) (discussing the right in the context of prison grievance procedures); Vandelft v. Moses, 31
24 F.3d 794, 796 (9th Cir. 1994); Ching v. Lewis, 895 F.2d 608, 609 (9th Cir. 1989) (per curiam). To
25 establish a violation of the right of access to the courts, a prisoner must establish that he or she has
26 suffered an actual injury, a jurisdictional requirement that flows from the standing doctrine and may
27 not be waived. See Lewis, 518 U.S. at 349. An “actual injury” is “actual prejudice with respect to
28 contemplated or existing litigation, such as the inability to meet a filing deadline or to present a

1 claim.” Id. at 348. Further, the right of access to the courts only pertains to attempts by inmates
2 to pursue direct appeals from the convictions for which they were incarcerated, habeas petitions, and
3 civil rights actions. Id. at 354.

4 Plaintiff’s sparse, one sentence allegation is not sufficient to state a cognizable claim against
5 Defendant Stephens. Plaintiff does not allege that he suffered “actual prejudice with respect to
6 contemplated or existing litigation.” In other words, Plaintiff has not alleged what harm he suffered
7 as a result of Defendant Stephens’ actions. Stephens’ actions do not rise to the level of a
8 constitutional violation if Plaintiff was nonetheless able to meet his filing deadline, or if Plaintiff was
9 given an extension of time and did not suffer any prejudice in his lawsuit.

10 Secondly, Plaintiff has not alleged what type of lawsuit he was pursuing. Plaintiff’s
11 constitutional guarantee of access to the courts only guarantees the right to pursue claims attacking
12 their sentences, or claims challenging the conditions of their confinement. Lewis, 518 U.S. at 355.
13 Plaintiff’s claim fails if he is complaining about interference with the pursuit of any other type of
14 claim.

15 Plaintiff fails to state a cognizable claim for interference with his right of access to the courts.
16 To the extent that he is able to, Plaintiff will be granted leave to file an amended complaint curing
17 the deficiencies identified in this order.

18 **IV. Conclusion and Order**

19 The Court has screened Plaintiff’s complaint and finds that it does not state any claims upon
20 which relief may be granted under section 1983. The Court will provide Plaintiff with the
21 opportunity to file an amended complaint curing the deficiencies identified by the court in this order.
22 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not add
23 unrelated claims involving different defendants in his amended complaint. George v. Smith, 507
24 F.3d 605, 607 (7th Cir. 2007).

25 If Plaintiff opts to amend, his amended complaint should be brief. Fed. R. Civ. P. 8(a).
26 Plaintiff must identify how each individual defendant caused the deprivation of Plaintiff’s
27 constitutional or other federal rights: “The inquiry into causation must be individualized and focus
28 on the duties and responsibilities of each individual defendant whose acts or omissions are alleged

1 to have caused a constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988).
2 With respect to exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P.
3 10(c), they are not necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). In other
4 words, it is not necessary at this stage to submit evidence to prove the allegations in Plaintiff’s
5 complaint because at this stage Plaintiff’s factual allegations will be accepted as true.

6 However, although Plaintiff’s factual allegations will be accepted as true and that “the
7 pleading standard Rule 8 announces does not require ‘detailed factual allegations’”, “a complaint
8 must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on
9 its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). (quoting Bell Atlantic Corp. v. Twombly,
10 550 U.S. 544, 555 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content
11 that allows the court to draw the reasonable inference that the defendant is liable for the misconduct
12 alleged.” Id. (citing Twombly, 550 U.S. at 556).

13 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
14 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
15 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
16 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an original
17 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing
18 London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
19 1474. In other words, even the claims that were properly stated in the original complaint must be
20 completely stated again in the amended complaint.

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

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

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5. If Plaintiff fails to file an amended complaint, the Court will recommend that this action be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: September 1, 2009

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE