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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LEON WILLIAMS,

Plaintiff,

v.

LYDIA HENSE, et al.,

Defendants.

CASE NO. 1:09-cv-01149-GBC PC

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND, FOR FAILURE TO
STATE A CLAIM

(Doc. 11)

THIRTY-DAY DEADLINE

I. Screening Requirement

Plaintiff Leon Williams, a former prisoner, is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff is currently out of custody and filed this action on July 1, 2009. (Doc. 1.) The complaint was screened by the Magistrate Judge and dismissed with leave to amend on October 28, 2010. (Doc. 11.) Currently before the Court is the first amended complaint, filed November 19, 2010. (Doc. 12.)

“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). In determining whether a complaint states a claim, the Court looks to the pleading standard under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)

1 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007)). “[A] complaint must contain
2 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
3 Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 570). Further, although a court must accept
4 as true all factual allegations contained in a complaint, a court need not accept a plaintiff’s legal
5 conclusions as true. Iqbal, 129 S. Ct. at 1949. “Threadbare recitals of the elements of a cause of
6 action, supported by mere conclusory statements, do not suffice.” Id. (quoting Twombly, 550 U.S.
7 at 555).

8 **II. Complaint Allegations**

9 Plaintiff alleges that while he was in custody on a violation, Defendant Horn failed to get his
10 file causing his paperwork to be delayed. This caused him to be in reception for five months. On
11 February 26, 2008, Plaintiff filed a grievance and asked to be interviewed by Defendant Horn.
12 Plaintiff was told that he was making people in high places mad. (Doc. 12, Amend. Comp., § IV.)

13 Defendant Laswell did not correct “the miscalculated date until [October 3, 2008].” (Id.)
14 Plaintiff had earlier received a parole date of October 15, 2008, and was paroled on October 3, 2008.
15 Plaintiff was actually to have been paroled on June 24, 2008. Defendant Hense is responsible for
16 the operation of the prison and all releases. Plaintiff alleges that Defendants Horn, Laswell, and
17 Hense were derelict in their duties. (Id.)

18 Plaintiff’s complaint does not state any claims upon which relief may be granted under
19 section 1983. Plaintiff is required to show that (1) each defendant acted under color of state law and
20 (2) each defendant deprived him of rights secured by the Constitution or federal law. Long v.
21 County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). Plaintiff must demonstrate that each
22 defendant personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930,
23 934 (9th Cir. 2002). This requires a showing that each defendant acted with deliberate indifference
24 to the risk that Plaintiff would suffer harm. Thomas v. Ponder, 611 F.3d 1144, 1150 (9th Cir. 2010)
25 Plaintiff is referred to the screening order issued October 28, 2010, for the legal standards that apply
26 to his claim.

27 Additionally, there is no respondeat superior liability under section 1983, and each defendant
28 is only liable for his or her own misconduct. Iqbal at 1948-49. Plaintiff failed to set forth adequate

1 facts demonstrating any violations of his constitutional rights, and Plaintiff failed to link any of the
2 named defendants to any acts or omissions at issue in the complaint.

3 **III. Conclusion and Order**

4 For the reasons stated, Plaintiff's complaint does not state a cognizable claim for relief for
5 a violation of his constitutional rights. Plaintiff is granted one final opportunity to file an amended
6 complaint within thirty days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may
7 not change the nature of this suit by adding new, unrelated claims in his amended complaint.
8 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

9 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
10 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,
11 Iqbal, 129 S. Ct. at 1948-49. "The inquiry into causation must be individualized and focus on the
12 duties and responsibilities of each individual defendant whose acts or omissions are alleged to have
13 caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although
14 accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the
15 speculative level" Twombly, 550 U.S. at 555 (citations omitted).

16 Finally, an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc.,
17 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must
18 be "complete in itself without reference to the prior or superceded pleading," Local Rule 220. "All
19 causes of action alleged in an original complaint which are not alleged in an amended complaint are
20 waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th
21 Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 23 1. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 24 2. Plaintiff's complaint, filed November 19, 2010, is dismissed for failure to state a
25 claim upon which relief may be granted under section 1983;
- 26 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
27 amended complaint; and

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4. If Plaintiff fails to file an amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: November 25, 2010


UNITED STATES MAGISTRATE JUDGE