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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LEON WILLIAMS,

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

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
PREJUDICE, FOR FAILURE TO STATE A
CLAIM

v.

LYDIA HENSE, et al.,

(Doc. 14)

Defendants.

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 first amended complaint was screened by the Magistrate Judge and dismissed with leave to amend on November 29, 2010. (Doc. 13.) Currently before the Court is the second amended complaint, filed December 10, 2010. (Doc. 14.)

“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 “Records” is responsible for miscalculating his parole date. (Doc. 14,
10 § III.) Plaintiff was originally told his parole date would be February 26, 2008. On a later date he
11 was given a parole date of October 15, 2008. When Plaintiff was paroled on October 3, 2008, he
12 was informed that his parole date was actually June 24, 2008. Plaintiff alleges this demonstrates the
13 incompetence of record keeping and the Defendant Hense exhibited dereliction of her duties by not
14 enforcing “strict standards established by the Prison Industry Authority.” (Id.)

15 **III. Discussion**

16 **A. Cruel and Unusual Punishment**

17 To prove a violation of the Eighth Amendment the plaintiff must “objectively show that he
18 was deprived of something ‘sufficiently serious,’ and make a subjective showing that the deprivation
19 occurred with deliberate indifference to the inmate’s health or safety.” Thomas v. Ponder, 611 F.3d
20 1144, 1150 (9th Cir. 2010) (citations omitted). Deliberate indifference requires a showing that
21 “prison officials were aware of a “substantial risk of serious harm” to an inmates health or safety and
22 that there was no “reasonable justification for the deprivation, in spite of that risk.” Id. (quoting
23 Farmer v. Brennan, 511 U.S. 825, 837, 844 (1994)). Officials may be aware of the risk because it
24 is obvious. Thomas, 611 F.3d at 1152. The circumstances, nature, and duration of the deprivations
25 are critical in determining whether the conditions complained of are grave enough to form the basis
26 of a viable Eighth Amendment claim.” Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2006).

27 Plaintiff is required to show that (1) each defendant acted under color of state law and (2)
28 each defendant deprived him of rights secured by the Constitution or federal law. Long v. County

1 of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). Plaintiff must demonstrate that each defendant
2 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th
3 Cir. 2002).

4 Despite being previously provided with the legal standards required to state a cognizable
5 claim, and given two opportunities to amend the complaint, Plaintiff has failed to allege that
6 Defendant Hense or any other defendant was aware of an error in the computation of Plaintiff's
7 parole date and acted or failed to act in response. Thomas, 611 F.3d at 1150. Plaintiff has failed to
8 allege more than negligence on the part of any official, which is not sufficient to establish liability.
9 Farmer, 511 U.S. at 835.

10 **B. Due Process**

11 In order to state a cause of action for a deprivation of due process, a plaintiff must first
12 identify a liberty interest for which the protection is sought. The Due Process Clause does not confer
13 a liberty interest in freedom from state action taken within a prisoner's imposed sentence. Sandin v.
14 Conner, 515 U.S. 472, 480 (1995). However, a state may "create liberty interests which are
15 protected by the Due Process Clause." Sandrin, 515 U.S. at 483-84. These are generally limited to
16 freedom from restraint which "imposes atypical and significant hardship on the inmate in relation
17 to the ordinary incidents of prison life." Id. at 484.

18 In a case where a prisoner has been unlawfully detained, the court must determine if the
19 detention was the result of a "random act" or "an official practice and procedure." Younger, 769
20 F.2d at 1359. Where the wrongful detention is the result of "affirmatively enacted or de facto
21 policies, practices or customs, the court must determine when the responsible state officials received
22 notice of a claim that a wrong was being done." Id. However, if the detention was a result of a
23 negligent act by an official then the Due Process Clause is not implicated. Daniels v. Williams, 474
24 U.S. 327, 328 (1986). If the act of a defendant is merely negligent it would not rise to a
25 constitutional violation and any potential remedy would lie in State law. Id. at 333. Plaintiff has
26 failed to allege facts that would state a claim based upon an "official practice or procedure" that
27 caused the deprivation of his liberty interest. Plaintiff's claim that he was detained beyond his date
28 of parole because his release date was miscalculated is insufficient to state a cognizable claim for

1 a violation of due process.

2 **C. Agency Liability**

3 Additionally, as Plaintiff was previous advised, “[t]he Eleventh Amendment bars suits for
4 money damages in federal court against a state, its agencies, and state officials acting in their official
5 capacities.” Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007). Plaintiff’s
6 allegation that Records miscalculated his parole date is an attempt to state a claim against a state
7 agency, not an individual defendant. Therefore, Plaintiff’s claim is not cognizable as it is barred by
8 the Eleventh Amendment.

9 **IV. Conclusion and Order**

10 The Court finds that Plaintiff’s complaint fails to state any claims upon which relief can be
11 granted under § 1983 against any named Defendant. Under Rule 15(a) of the Federal Rules of Civil
12 Procedure, leave to amend ‘shall be freely given when justice so requires.’” In addition, “[l]eave to
13 amend should be granted if it appears at all possible that the plaintiff can correct the defect.” Lopez
14 v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000) (internal citations omitted). However, in this action
15 Plaintiff has been granted two opportunities to amend the complaint, with guidance by the Court.
16 Plaintiff has now filed three complaints without alleging facts against any of the defendants
17 sufficient to state a claim under § 1983. The Court finds that since Plaintiff was previously given
18 two opportunities to amend to cure the deficiencies in his claims, further leave to amend is not
19 warranted. 28 U.S.C. § 1915(e)(2)(B)(ii); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
20 This action is HEREBY ORDERED dismissed, with prejudice, for failure to state a claim under
21 section 1983, and the Clerk’s Office shall enter judgment.

22 IT IS SO ORDERED.

23 Dated: December 20, 2010

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25 UNITED STATES MAGISTRATE JUDGE
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