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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KEVIN E. FIELDS,

Plaintiff,

v.

T. LLOREN, et al.,

Defendants.

CASE NO. 1:09-cv-1733-MJS (PC)

ORDER DISMISSING PLAINTIFF'S  
COMPLAINT FOR FAILURE TO STATE A  
CLAIM

(ECF No. 1)

AMENDED COMPLAINT DUE WITHIN  
THIRTY DAYS

Plaintiff Kevin Fields ("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 initiated this action on October 2, 2009. His original Complaint is currently before the Court for screening. For the reasons explained below, the Court finds that Plaintiff's Complaint fails to state a claim upon which relief could be granted.

**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). "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

1 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

2 A complaint must contain “a short and plain statement of the claim showing that the  
3 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are  
4 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by  
5 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949  
6 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65  
7 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim  
8 that is plausible on its face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555).  
9 Facial plausibility demands more than the mere possibility that a defendant committed  
10 misconduct and, while factual allegations are accepted as true, legal conclusions are not.  
11 Id. at 1949-50.

## 12 **II. PLAINTIFF’S ALLEGATIONS**

13 Plaintiff is a prisoner currently housed in the secured housing unit at Corcoran State  
14 Prison in Corcoran, California. He brings this action against the following Defendants: T.  
15 Lloren, M. Kimbrell, J. Jones, A. Morrison, C.D. Battles, A.C. Garcia, and Does 1-25, who  
16 are all employees of the CDCR at Corcoran.

17 The entirety of the factual allegations in this case are as follows:

- 18 9.) Defendants T. Lloren, A. Morrison, D.C. Battles, R.C.  
19 Garcia, M. Kimbrell, J. Jones conspired inter se to  
20 retaliate against Plaintiff for exercising his rights to file  
21 and maintain lawsuits against prison officials, which is  
22 a protected conduct within the meaning of the first  
23 amendment to the United States Constitution.
- 24 10.) As direct result of the Defendants’ actions, I suffered a  
25 violation of my constitutional rights resulting in actual  
26 injuries in Criminal Case No. 08cm7005 Superior Court  
27 County of Kings.

28 (ECF No. 1 at 2.) Plaintiff asks the Court for a declaratory judgment stating that he has the  
right to file and maintain lawsuits, to enjoin Defendants from violating his constitutional  
rights, for compensatory, punitive, and nominal damages, and costs and attorneys fees.

1 **III. ANALYSIS**

2 Section 1983 “provides a cause of action for the ‘deprivation of any rights, privileges,  
3 or immunities secured by the Constitution and laws’ of the United States.” Wilder v.  
4 Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983  
5 is not itself a source of substantive rights, but merely provides a method for vindicating  
6 federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

7 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that  
8 a right secured by the Constitution or laws of the United States was violated, and (2) that  
9 the alleged violation was committed by a person acting under the color of state law. See  
10 West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245  
11 (9th Cir.1987).

12 **A. Retaliation**

13 Plaintiff alleges that Defendants retaliated against him for exercising his First  
14 Amendment right to file and pursue litigation. He claims that this retaliation interfered with  
15 his ability to prosecute a criminal action in Kings County Superior Court.

16 Allegations of retaliation against a prisoner’s First Amendment rights to speech or  
17 to petition the Court may support a section 1983 claim. Rizzo v. Dawson, 778 F.2d 527,  
18 532 (9th Cir. 1985). A prisoner retaliation claim based on the First Amendment has five  
19 elements: “(1) An assertion that a state actor took some adverse action against an inmate  
20 (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the  
21 inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably  
22 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th  
23 Cir. 2005).

24 The allegations in Plaintiff’s Complaint fail to meet these requirements or state a  
25 claim. Most significantly, Plaintiff has not alleged how the Defendants retaliated against  
26 him. There is no indication of what adverse action, if any, the named Defendants took  
27 against Plaintiff. Plaintiff also fails to allege that the allegedly retaliatory activity was  
28 unrelated to a legitimate correctional goal.

1 The Complaint is devoid of facts necessary to state a retaliation claim. Plaintiff will  
2 be given leave to amend his claims to attempt to allege sufficient facts to address the five  
3 elements of a retaliation claim outlined above.

4 **B. Personal Participation of Defendants**

5 Under Section 1983, Plaintiff must demonstrate that each named Defendant  
6 personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930,  
7 934 (9th Cir. 2002). The Supreme Court has emphasized that the term “supervisory  
8 liability,” loosely and commonly used by both courts and litigants alike, is a misnomer.  
9 Iqbal, 129 S.Ct. at 1949. “Government officials may not be held liable for the  
10 unconstitutional conduct of their subordinates under a theory of respondeat superior.” Id.  
11 at 1948. Rather, each government official, regardless of his or her title, is only liable for  
12 his or her own misconduct. Therefore, Plaintiff must demonstrate that each Defendant,  
13 through his or her own individual actions, violated Plaintiff’s constitutional rights. Id. at  
14 1948-49.

15 In order to establish liability against a supervisor, a plaintiff must allege facts  
16 demonstrating (1) personal involvement in the constitutional deprivation, or (2) a sufficient  
17 causal connection between the supervisor’s wrongful conduct and the constitutional  
18 violation. Jeffers v. Gomez, 267 F.3d 895, 915 (9th Cir. 2001); Wesley v. Davis, 333  
19 F.Supp.2d 888, 892 (C.D.Cal. 2004). The sufficient causal connection may be shown by  
20 evidence that the supervisor implemented a policy so deficient that the policy itself is a  
21 repudiation of constitutional rights. Wesley, 333 F.Supp.2d at 892 (internal quotations  
22 omitted). However, an individual’s general responsibility for supervising the operations of  
23 a prison is insufficient to establish personal involvement. Id. (internal quotations omitted).

24 In this case, Plaintiff fails to tie any particular act to a named Defendant. A general  
25 allegation that the Defendants acted in a particular manner is insufficient to state a claim.  
26 In his Amended Complaint, he must allege plausible facts showing how each Defendant  
27 personally participated in the violation of his constitutional rights.

1           **C.     Doe Defendants**

2           Plaintiff names John Does 1 through 25 as Defendants in this action. “As a general  
3 rule, the use of ‘John Doe’ to identify a defendant is not favored.” Gillespie v. Civiletti, 629  
4 F.2d 637, 642 (9th Cir. 1980). “It is permissible to use Doe defendant designations in a  
5 complaint to refer to defendants whose names are unknown to plaintiff. Although the use  
6 of Doe defendants is acceptable to withstand dismissal of a complaint at the initial review  
7 stage, using Doe defendants creates its own problem: those persons cannot be served  
8 with process until they are identified by their real names.” Robinett v. Correctional Training  
9 Facility, 2010 WL 2867696, \*4 (N.D.Cal. July 20, 2010). Plaintiff is advised that the John  
10 Doe defendants can not be served by the United States Marshal until Plaintiff has identified  
11 them as actual individuals and amended his complaint to substitute the Defendants’ actual  
12 names. The burden remains on Plaintiff to promptly discover the full names of Doe  
13 Defendants; the Court will not undertake to investigate the names and identities of  
14 unnamed Defendants. Id. Because the Court is granting Plaintiff an opportunity to amend  
15 his claims, it will also give him leave to set forth sufficient identification for the John Doe  
16 Defendants.

17           **IV.    CONCLUSION AND ORDER**

18           The Court finds that Plaintiff’s Complaint fails to state a claim upon which relief may  
19 be granted. The Court will provide Plaintiff time to file an amended complaint to address  
20 the deficiencies noted above. See Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).  
21 In his Amended Complaint, Plaintiff must demonstrate that the alleged incident resulted  
22 in a deprivation of her constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff must set  
23 forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’” Iqbal, 129  
24 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). Plaintiff must also demonstrate that  
25 each Defendant personally participated in the deprivation of his rights. Jones, 297 F.3d  
26 at 934.

27           Plaintiff should note that although he has been given the opportunity to amend, it  
28 is not for the purposes of adding new claims. Plaintiff should focus his Amended

1 Complaint on the allegedly retaliatory activities of the named Defendants.

2 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint  
3 be complete in itself without reference to any prior pleading. As a general rule, an  
4 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,  
5 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer  
6 serves any function in the case. Therefore, in an amended complaint, as in an original  
7 complaint, each claim and the involvement of each defendant must be sufficiently alleged.  
8 The amended complaint should be clearly and boldly titled "Amended Complaint," refer to  
9 the appropriate case number, and be an original signed under penalty of perjury.

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

- 11 1. Plaintiff's complaint is dismissed for failure to state a claim, with leave to file  
12 an amended complaint within thirty (30) days from the date of service of this  
13 order;
- 14 2. Plaintiff shall caption the document "Amended Complaint" and refer to the  
15 case number 1:09-cv-1733-AWI-MJS (PC); and
- 16 3. If Plaintiff fails to comply with this order, this action will be dismissed for  
17 failure to prosecute and failure to state a claim upon which relief may be  
18 granted.

19  
20 IT IS SO ORDERED.

21 Dated: December 9, 2010

1st. Michael J. Song  
UNITED STATES MAGISTRATE JUDGE