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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TRAVON LEON FREEMAN,

CASE NO. 1:09-cv-02129-SMS PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO AMEND

v.

(Doc. 1)

DERRALL G. ADAMS, et al.,

THIRTY-DAY DEADLINE

Defendants.

Screening Order

**I. Screening Requirement**

Plaintiff Travon Leon Freeman, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on December 8, 2009. The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an 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 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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). Detailed factual allegations are not required, but

1 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
2 do not suffice,” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic Corp. v.  
3 Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not required to indulge  
4 unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal  
5 quotation marks and citation omitted). While factual allegations are accepted as true, legal  
6 conclusions are not. Iqbal, 129 S.Ct. at 1949.

7 Under section 1983, Plaintiff must demonstrate that each defendant personally participated  
8 in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires  
9 the presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 129 S.Ct.  
10 at 1949-50; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility  
11 of misconduct falls short of meeting this plausibility standard. Iqbal, 129 S.Ct. at 1949-50; Moss,  
12 572 F.3d at 969.

## 13 **II. Plaintiff’s Claims**

### 14 **A. Allegations**

15 Plaintiff is incarcerated at California State Prison- Corcoran, where the events at issue in this  
16 action occurred. Plaintiff names Warden Derrall G. Adams, Lieutenant G. A. Finley, Sergeant R.  
17 Davidson, and Correctional Officer B. David as defendants. Plaintiff alleges claims for excessive  
18 force and unconstitutional conditions of confinement, in violation of the Eighth Amendment.

19 On June 18, 2009, Defendant David was handcuffing Plaintiff when he began twisting the  
20 cuffs on Plaintiff’s wrists, causing pain. Plaintiff jerked away from Defendant David and asked for  
21 the sergeant, Defendant Davidson. While Plaintiff and his cellmate were being taken to a holding  
22 cell, Defendant David hit Plaintiff in the back of the head and called him a “fucking asshole” in front  
23 of Defendants Davidson and Finley.

24 It then took more than twenty hours for Plaintiff to be re-housed. During that time, Plaintiff  
25 was left outside on yard for six hours in his boxer shorts and shirt, and he slept in a cell with  
26 cobwebs, spiders, moths, and gnats.

27 These events arose because Defendant David was harassing Plaintiff by refusing to feed him  
28 and his cellmate, and by yelling and kicking Plaintiff’s cell door.

1           **B. Excessive Force**

2           The Cruel and Unusual Punishments Clause of the Eighth Amendment protects prisoners  
3 from the use of excessive physical force. Wilkins v. Gaddy, \_\_\_ U.S. \_\_\_, \_\_\_, 130 S.Ct. 1175,  
4 1178 (2010) (per curiam); Hudson v. McMillian, 503 U.S. 1, 8-9, 112 S.Ct. 995 (1992). What is  
5 necessary to show sufficient harm under the Eighth Amendment depends upon the claim at issue,  
6 with the objective component being contextual and responsive to contemporary standards of  
7 decency. Hudson, 503 U.S. at 8 (quotation marks and citations omitted). For excessive force claims,  
8 the core judicial inquiry is whether the force was applied in a good-faith effort to maintain or restore  
9 discipline, or maliciously and sadistically to cause harm. Wilkins, \_\_\_ U.S. at \_\_\_, 130 S.Ct. at 1178  
10 (quoting Hudson, 503 U.S. at 7) (quotation marks omitted).

11           Not every malevolent touch by a prison guard gives rise to a federal cause of action. Wilkins,  
12 \_\_\_ U.S. at \_\_\_, 130 S.Ct. at 1178 (quoting Hudson, 503 U.S. at 9) (quotation marks omitted).  
13 Necessarily excluded from constitutional recognition is the de minimis use of physical force,  
14 provided that the use of force is not of a sort repugnant to the conscience of mankind. Wilkins, \_\_\_  
15 U.S. at \_\_\_, 130 S.Ct. at 1178 (quoting Hudson, 503 U.S. at 9-10) (quotations marks omitted). In  
16 determining whether the use of force was wanton and unnecessary, courts may evaluate the extent  
17 of the prisoner’s injury, the need for application of force, the relationship between that need and the  
18 amount of force used, the threat reasonably perceived by the responsible officials, and any efforts  
19 made to temper the severity of a forceful response. Hudson, 503 U.S. at 7 (quotation marks and  
20 citations omitted).

21           While not laudable behavior, the Court nevertheless cannot conclude that Defendant David’s  
22 conduct was more than de minimis under circumstances described in the complaint. The Court finds  
23 that Plaintiff’s excessive force claim is not cognizable.

24           **C. Conditions of Confinement**

25           The Eighth Amendment protects prisoners from inhumane conditions of confinement. Foster  
26 v. Runnels, 554 F.3d 807, 812 (9th Cir. 2009); Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
27 2006). Extreme deprivations are required to make out a conditions of confinement claim, and only  
28 those deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave

1 to form the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct.  
2 995 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth  
3 Amendment, Plaintiff must allege facts sufficient to show that prison officials knew of and  
4 disregarded a substantial risk of serious harm to him. E.g., Farmer v. Brennan, 511 U.S. 825, 847,  
5 114 S.Ct. 1970 (1994); Foster, 554 F.3d at 812; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

6 The circumstances, nature, and duration of the deprivations are critical in determining  
7 whether the conditions complained of are grave enough to form the basis of a viable Eighth  
8 Amendment claim, and “routine discomfort inherent in the prison setting” does not rise to the level  
9 of a constitutional violation. Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2006). The conditions  
10 complained of by Plaintiff do not appear to have been sufficiently grave to support an Eighth  
11 Amendment claim. Further, Plaintiff has not linked the conditions to any of the named defendants.  
12 Iqbal, 129 S.Ct. at 1949-50.

#### 13 **D. Claims Against Supervisory Personnel**

14 Finally, Plaintiff may not seek to impose liability on supervisory personnel under the theory  
15 of respondeat superior, as each defendant is only liable for his own misconduct. Id. at 1948-49. A  
16 supervisor may be held liable only if he “participated in or directed the violations, or knew of the  
17 violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989);  
18 also Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School  
19 Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204  
20 (9th Cir. 1997). Plaintiff’s complaint is devoid of any facts supporting a claim against Defendants  
21 Adams, Finley, and Davidson.

#### 22 **III. Conclusion and Order**

23 Plaintiff’s complaint fails to state a claim upon which relief may be granted under section  
24 1983. The Court will grant Plaintiff an opportunity to file an amended complaint. Noll v. Carlson,  
25 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding  
26 new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.  
27 2007).

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1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
2 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,  
3 Iqbal, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations must be [sufficient]  
4 to raise a right to relief above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations  
5 omitted).

6 Finally, an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc.,  
7 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must  
8 be "complete in itself without reference to the prior or superceded pleading," Local Rule 220.  
9 Therefore, "[a]ll causes of action alleged in an original complaint which are not alleged in an  
10 amended complaint are waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand,  
11 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 13 1. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 14 2. Plaintiff's complaint, filed December 8, 2009, is dismissed for failure to state a claim  
15 upon which relief may be granted;
- 16 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
17 amended complaint; and
- 18 4. If Plaintiff fails to file an amended complaint in compliance with this order, this  
19 action will be dismissed, with prejudice, for failure to state a claim.

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23 IT IS SO ORDERED.

24 **Dated: February 8, 2011**

24 /s/ Sandra M. Snyder  
25 UNITED STATES MAGISTRATE JUDGE