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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 LENTON WILLIE ROME HALL,

Case No. 1:10-cv-01426 OWW JLT (PC)

12 Plaintiff,

ORDER DISMISSING THE COMPLAINT
WITH LEAVE TO AMEND

13 vs.

(Doc. 1)

14 M. MCALLISTER,

15 Defendant.
16 _____ /

17 Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil rights action
18 pursuant to 42 U.S.C. § 1983. This action was transferred from the Central District of California, as the
19 events alleged in the complaint occurred in Kern Valley State Prison which is within the jurisdiction of
20 the Eastern District of California. (Doc. 4.) Pending before the Court is Plaintiff's complaint filed on
21 July 27, 2010.

22 **I. SCREENING REQUIREMENT**

23 The Court is required to review a case in which a prisoner seeks redress from a governmental
24 entity or officer. 28 U.S.C. § 1915A(a). The Court must review the complaint and dismiss any portion
25 thereof that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks
26 monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). If the Court
27 determines the complaint fails to state a claim, leave to amend should be granted to the extent that the
28 deficiencies can be cured by amendment. Lopez v. Smith, 203 F.3d 1122, 1127-28 (9th Cir. 2000).

1 The Civil Rights Act under which this action was filed provides a cause of action against any
2 “person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United
3 States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or
4 immunities secured by the Constitution and laws [of the United States.]” 42 U.S.C. § 1983. To prove
5 a violation of § 1983, a plaintiff must establish that (1) the defendant deprived him of a constitutional
6 or federal right, and (2) the defendant acted under color of state law. West v. Atkins, 487 U.S. 42, 48
7 (1988); Collins v. Womancare, 878 F.2d 1145, 1147 (9th Cir. 1989). “A person deprives another of a
8 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in
9 another’s affirmative acts, or omits to perform an act which he is legally required to do that causes the
10 deprivation of which [the plaintiff complains].” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993)
11 (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). In other words, there must be an actual
12 causal connection between the actions of each defendant and the alleged deprivation. See Rizzo v.
13 Goode, 423 U.S. 362, 370-71 (1976).

14 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim
15 showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . .
16 . claim is and the grounds upon which it rests[.]’” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555
17 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). Nevertheless, a plaintiff’s obligation to
18 provide the grounds of entitlement to relief under Rule 8(a)(2) requires more than “naked assertions,”
19 “labels and conclusions,” or “formulaic recitation[s] of the elements of a cause of action.” Twombly,
20 550 U.S. at 555-57. The complaint “must contain sufficient *factual matter*, accepted as true, to ‘state
21 a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d
22 868, 883 (2009) (quoting Twombly, 550 U.S. at 570) (emphasis added).

23 **II. THE COMPLAINT**

24 Plaintiff’s complaint is difficult to read and even more difficult to understand. The essence of
25 Plaintiff’s allegations is that prison officials are putting a chemical poison in his food as a reprisal for
26 Plaintiff’s attack on a prison guard with a razor blade 12 years ago at Folsom State Prison. (Doc. 1 at
27 1.) Plaintiff is currently confined at Kern Valley State Prison. (Id.) In terms of relief, Plaintiff seeks
28 an injunction preventing prison officials from putting “any substance” in his food. (Id. at 6.)

1 **III. DISCUSSION**

2 The Eighth Amendment’s prohibition against cruel and unusual punishment protects prisoners
3 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006)
4 (citing Farmer v. Brennan, 511 U.S. 825, 832 (1994)). Prison officials have a constitutional “duty to
5 ensure that prisoners are provided with adequate shelter, food, clothing, sanitation, medical care, and
6 personal safety.” Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000) (citations omitted).

7 To establish a violation of this duty, a prisoner must satisfy both an objective and subjective
8 component. See Wilson v. Seiter, 501 U.S. 294, 298 (1991). First, a prisoner must demonstrate an
9 objectively serious deprivation, one that amounts to a denial of “the minimal civilized measures of life’s
10 necessities.” Keenan v. Hall, 83 F.3d 1083, 1089 (9th Cir. 1996) (quoting Rhodes v. Chapman, 452 U.S.
11 337, 346 (1981)). In determining whether a deprivation is sufficiently serious, “the circumstances,
12 nature, and duration” of the deprivation must be considered. Johnson, 217 F.3d at 731. “The more basic
13 the need, the shorter the time it can be withheld.” Hoptowit v. Ray, 682 F.2d 1237, 1259 (9th Cir. 1982).
14 Second, a prisoner must also demonstrate that prison officials acted with a sufficiently culpable state of
15 mind, that of “deliberate indifference.” Wilson, 501 U.S. at 303; Johnson, 217 F.3d at 733. A prison
16 official is liable for denying an inmate humane conditions of confinement only if “the official knows of
17 and disregards an excessive risk to inmate health and safety; the official must both be aware of facts
18 from which the inference could be drawn that a substantial risk of serious harm exists, and he must also
19 draw the inference.” Farmer, 511 U.S. at 837.

20 Here, Plaintiff arguably satisfies the objective component of a conditions of confinement claim
21 under the Eighth Amendment. Plaintiff alleges that prison officials are lacing his food with a liquid
22 chemical that causes a burning sensation. (Doc. 1 at 1.) However, Plaintiff fails to link this allegation
23 to any specific individual. Plaintiff simply states that prison officials at Kern Valley State Prison, as a
24 whole, are responsible for putting the liquid chemical in his food for retaliatory purposes. (See id.) This
25 is insufficient to demonstrate deliberate indifference and, as a general matter, is insufficient to state a
26 claim under § 1983. See Rizzo, 423 U.S. at 370-71.

27 The Court will therefore provide Plaintiff an opportunity to amend his pleadings to cure the
28 deficiencies noted in this order. See Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987) (“A pro

1 se litigant must be given leave to amend his or her complaint unless it is absolutely clear that the
2 deficiencies of the complaint could not be cured by amendment.”) (internal quotations omitted).
3 However, if Plaintiff elects to file an amended complaint, he is cautioned that he may not change the
4 nature of this suit by adding new, unrelated claims in his amended complaint. See George v. Smith, 507
5 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints). Plaintiff is also advised that once he files an
6 amended complaint, his original pleadings are superceded and no longer serve any function in the case.
7 See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, the amended complaint must be “complete
8 in itself without reference to the prior or superceded pleading.” Local Rule 220. “All causes of action
9 alleged in an original complaint which are not [re-]alleged in an amended complaint are waived.” King
10 v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (citations omitted)

11 **IV. CONCLUSION**

12 Accordingly, it is **HEREBY ORDERED** that:

- 13 1. Plaintiff’s complaint is **DISMISSED**;
- 14 2. Plaintiff is granted twenty-one (21) days from the date of service of this order to file an
15 amended complaint that complies with the requirements of the Federal Rules of Civil
16 Procedure and the Local Rules; the amended complaint must bear the docket number
17 assigned to this case and must be labeled “Amended Complaint”;
- 18 3. The Clerk of the Court is directed to send Plaintiff the form complaint for use in a civil
19 rights action; and
- 20 4. Plaintiff is firmly cautioned that failure to comply with this order will result in a
21 recommendation that this action be dismissed.

22
23 IT IS SO ORDERED.

24 Dated: June 27, 2011

25 /s/ Jennifer L. Thurston
26 UNITED STATES MAGISTRATE JUDGE
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