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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN E. WEST,	CASE NO. 1:11-cv-00851-LJO-GBC (PC)
Plaintiff,	ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND
v.	(ECF No. 1)
A. LOPEZ, et al.,	AMENDED COMPLAINT DUE WITHIN THIRTY DAYS
Defendants.	

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff John E. West ("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's Complaint was filed with this Court May 23, 2011. (ECF No. 6.) This Complaint is now before the Court for screening.

For the reasons set forth below, the Court finds that Plaintiff's Complaint fails to state a claim upon which relief may be granted.

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1 **II. SCREENING REQUIREMENTS**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
5 raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which
6 relief may be granted, or that seek monetary relief from a defendant who is immune from
7 such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion
8 thereof, that may have been paid, the court shall dismiss the case at any time if the court
9 determines that . . . the action or appeal . . . fails to state a claim upon which relief may be
10 granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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13 A complaint must contain “a short and plain statement of the claim showing that the
14 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
15 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
16 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
17 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
18 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
19 face.’” Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). While factual
20 allegations are accepted as true, legal conclusions are not. Iqbal, 129 S.Ct. at 1949.

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22 **III. SUMMARY OF COMPLAINT**

23 Plaintiff brings this action for violation of the Eighth Amendment and the Americans
24 with Disabilities Act. Plaintiff names the following individuals as Defendants: Edgar Clance
25 and CSP CORI.
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1 Plaintiff alleges that his wheel chair, glasses, and boots have been taken. And, he
2 repeatedly states that he needs three surgeries and would like his prosthetics to be
3 returned.

4 Plaintiff seeks monetary and punitive damages, and injunctive relief.

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6 **IV. ANALYSIS**

7 The Civil Rights Act under which this action was filed provides:

8 Every person who, under color of [state law] . . . subjects, or
9 causes to be subjected, any citizen of the United States . . . to
10 the deprivation of any rights, privileges, or immunities secured
11 by the Constitution . . . shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for
redress.

12 42 U.S.C. § 1983. “Section 1983 . . . creates a cause of action for violations of the federal
13 Constitution and laws.” Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir.
14 1997) (internal quotations omitted).

15
16 **A. Eighth Amendment**

17 Plaintiff appears to be making an Eighth Amendment deliberate indifference claim.
18 However, Plaintiff fails to attribute responsibility of any actions or inactions to a named
19 defendant. In fact, Plaintiff does not name any individuals in his statement of the case.
20 Plaintiff merely states that he needs three surgeries, which have apparently been denied.
21 This is not sufficient to state an Eighth Amendment claim. If Plaintiff would like to attempt
22 to state such a claim he must abide by the following legal standard and include additional
23 facts to allow the Court to make such a determination.
24

25 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an
26 inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439
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1 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106 (1976)). The
2 two part test for deliberate indifference requires the plaintiff to show (1) “a serious medical
3 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
4 significant injury or the unnecessary and wanton infliction of pain,” and (2) “the defendant’s
5 response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting
6 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds,
7 WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc) (internal quotations
8 omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a
9 prisoner’s pain or possible medical need, and harm caused by the indifference.” Jett, 439
10 F.3d at 1096 (citing McGuckin, 974 F.2d at 1060). In order to state a claim for violation of
11 the Eighth Amendment, a plaintiff must allege sufficient facts to support a claim that the
12 named defendants “[knew] of and disregard[ed] an excessive risk to [Plaintiff’s] health . .
13 . .” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

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16 The Court will grant Plaintiff leave to amend this claim and attempt to set forth
17 sufficient facts to state such a claim.

18 **B. Americans with Disabilities Act**

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20 Plaintiff makes one statement that Defendants should be held accountable under
21 the Americans with Disabilities Act. However, as noted above, Plaintiff has failed to
22 attribute responsibility for any act or inaction to any named defendant. Plaintiff’s
23 statements that he needs to have surgeries is not sufficient to state an ADA claim. If
24 Plaintiff would like to state such a claim, he must keep in mind the following legal standard.

25 The Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12131–34, is applicable
26 in the prison context. Pennsylvania Dep’t of Corr. v. Yeskey, 524 U.S. 206, 213 (1998).
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1 Under Title II of the ADA, “no qualified individual with a disability shall, by reason of such
2 disability, be excluded from participation in or be denied the benefits of the services,
3 programs, or activities of a public entity, or be subjected to discrimination by any such
4 entity.” 42 U.S.C. § 12132. A “public entity” is “any State or local government; [or] (B) any
5 department, agency, special purpose district, or other instrumentality of a State or States
6 or local government. . . .” 42 U.S.C. § 12131. Individuals, however, may only be sued
7 under the ADA in their official, rather than, their individual capacities. Vinson v. Thomas,
8 288 F.3d 1145, 1156 (9th Cir. 2002) (plaintiff cannot sue state officials in their individual
9 capacities to vindicate rights created by Title II of the ADA). To state an ADA claim, a
10 plaintiff must allege facts to support that he: “(1) is a handicapped person; (2) that is
11 otherwise qualified; and that [prison officials’] actions either (3) excluded his participation
12 in or denied him the benefits of a service, program, or activity; or (4) otherwise subjected
13 him to discrimination on the basis of his physical handicap.” Duffy v. Riveland, 98 F.3d
14 447, 455 (9th Cir. 1996).

17 If Plaintiff wishes to bring a claim for ADA violations, he should allege facts to
18 support that he is a handicapped person who is otherwise qualified, that particular
19 Defendants’ actions excluded his participation in or denied him the benefits of any service,
20 program, or activity, or otherwise discriminated against him based on a physical handicap.
21 Plaintiff should specifically allege when and what service, program, or activity he was
22 denied due to his disability.

24 **C. Property**

25 Plaintiff appears to be alleging that his due process rights were violated when his
26 property – wheel chair, glasses, and boots – were taken. However, much like the claims
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1 above, Plaintiff does not attribute responsibility for this taking to any named Defendants.
2 If Plaintiff would like to pursue a due process property claim, he should keep the following
3 legal standard in mind. Also, Plaintiff must allege that he complied with the California Tort
4 Claims Act to proceed on this claim.
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6 The Due Process Clause protects prisoners from being deprived of property without
7 due process of law, Wolff v. McDonnell, 418 U.S. 539, 556 (1974), and prisoners have a
8 protected interest in their personal property, Hansen v. May, 502 F.2d 728, 730 (9th Cir.
9 1974). However, while an authorized, intentional deprivation of property is actionable
10 under the Due Process Clause, Hudson v. Palmer, 468 U.S. 517, 532 n.13 (1984) (citing
11 Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-36 (1982)); Quick v. Jones, 754 F.2d
12 1521, 1524 (9th Cir. 1985), neither negligent nor unauthorized intentional deprivations of
13 property by a state employee “constitute a violation of the procedural requirements of the
14 Due Process Clause of the Fourteenth Amendment if a meaningful post-deprivation
15 remedy for the loss is available,” Hudson, 468 U.S. at 533.
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17 California Law provides an adequate post-deprivation remedy for any property
18 deprivations. See Cal. Gov’t Code §§ 895; Barnett v. Centoni, 31 F.3d 813, 816-17 (9th
19 Cir. 1994). California’s Tort Claims Act requires that a tort claim against a public entity or
20 its employees be presented to the California Victim Compensation and Government Claims
21 Board, formerly known as the State Board of Control, no more than six months after the
22 cause of action accrues. Cal. Gov’t Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West
23 2006). Presentation of a written claim, and action on or rejection of the claim, are
24 conditions precedent to suit. State v. Superior Court of Kings County (Bodde), 90 P.3d
25 116, 123 (2004); Mangold v. California Pub. Utils. Comm’n, 67 F.3d 1470, 1477 (9th Cir.
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1 1995). To state a tort claim against a public employee, a plaintiff must allege compliance
2 with the Tort Claims Act. State v. Superior Court, 90 P.3d at 123; Mangold, 67 F.3d at
3 1477; Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 627 (9th Cir. 1988).

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5 **D. Personal Participation of Defendants**

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

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16 In this action, Plaintiff has not alleged facts demonstrating that any named
17 personally acted to violate his rights. In fact, Plaintiff does name any individual in his
18 statement of the case. Plaintiff shall be given the opportunity to file an amended complaint
19 curing the deficiencies described by the Court in this order.

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21 **V. CONCLUSION AND ORDER**

22 The Court finds that Plaintiff’s Complaint fails to state any claims upon which relief
23 may be granted under section 1983 against any of the named defendants. Having notified
24 Plaintiff of the deficiencies in his Complaint, the Court will provide him with time to file an
25 amended complaint to address these deficiencies. See Noll v. Carlson, 809 F.2d 1446,
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1 1448-49 (9th Cir. 1987).

2 In his amended complaint, Plaintiff must demonstrate that the alleged incident
3 resulted in a deprivation of his constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff
4 must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’”
5 Iqbal, 129 S.Ct. at 1949 (quoting Twombly, 550 U.S. at 555). Plaintiff must also
6 demonstrate that each defendant personally participated in the deprivation of his rights.
7 Jones, 297 F.3d at 934.

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9 Plaintiff should note that although he has been given the opportunity to amend, it
10 is not for the purposes of adding new defendants or claims. Plaintiff should focus the
11 amended complaint on claims and defendants only relating to issues surrounding the
12 surgeries he allegedly needs and the confiscation of his wheel chair, glasses, and boots.

13
14 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
15 be complete in itself without reference to any prior pleading. As a general rule, an
16 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
17 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
18 serves any function in the case. Therefore, in an amended complaint, as in an original
19 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
20 The amended complaint should be clearly and boldly titled “First Amended Complaint,”
21 refer to the appropriate case number, and be an original signed under penalty of perjury.

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

- 24 1. Plaintiff’s complaint is dismissed for failure to state a claim, with leave to file
25 an amended complaint within thirty (30) days from the date of service of this
26 order;
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- 2. Plaintiff shall caption the amended complaint "First Amended Complaint" and refer to the case number 1:11-cv-851-LJO-GBC (PC); and
- 3. If Plaintiff fails to comply with this order, this action will be dismissed for failure to state a claim upon which relief may be granted.

IT IS SO ORDERED.

Dated: October 6, 2011


UNITED STATES MAGISTRATE JUDGE