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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CURTIS BREWER,	)	1:12-cv-01025-AWI-BAM (PC)
	)	
Plaintiff,	)	ORDER DISMISSING COMPLAINT WITH
	)	LEAVE TO AMEND (ECF No. 1)
v.	)	
	)	THIRTY-DAY DEADLINE
R. BRAVO,	)	
	)	
Defendant.	)	
	)	

**I. Screening Requirement and Standard**

Plaintiff Curtis Brewer (“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, filed on June 25, 2012, is currently before the Court for screening.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. [28 U.S.C. § 1915A\(a\)](#). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915A\(b\)\(1\), \(2\)](#); [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 “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” [Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937,](#)  
2 [1949](#) (2009) (citing [Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65](#)  
3 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
4 unwarranted inferences.” [Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 \(9th Cir. 2009\)](#)  
5 (internal quotation marks and citation omitted).

6 To survive screening, Plaintiff’s claims must be facially plausible, which requires  
7 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable  
8 for the misconduct alleged. [Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949](#) (quotation marks omitted);  
9 [Moss v. United States Secret Service, 572 F.3d 962, 969 \(9th Cir. 2009\)](#). The sheer possibility  
10 that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short  
11 of satisfying the plausibility standard. [Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949](#) (quotation marks  
12 omitted); [Moss, 572 F.3d at 969](#).

## 13 **II. Plaintiff’s Allegations**

14 Plaintiff is currently housed at the Lancaster State Prison. The events complained about  
15 allegedly occurred while Plaintiff was housed at Kern Valley State Prison.

16 Plaintiff alleges as follows: “On July 18, 2010, c/o R. Bravo allowed I/M’s Smith  
17 #F24249 and Board #F16687 out of their cell to assault me, while on lockdown performing my  
18 then Men’s Advisory Counsel [sic] Representative (“MAC-REP”) building functions, while a  
19 substantial risk of serious harm existed, with this knowledge thereof and I was injured in the  
20 attack.” (ECF No. 1, p. 3.)

21 Plaintiff seeks compensatory and punitive damages.

## 22 **III. Deficiencies of the Complaint**

23 Due to its abbreviated and conclusory nature, Plaintiff’s complaint will be dismissed with  
24 leave to amend. To assist Plaintiff in amending his complaint, Plaintiff is provided with the  
25 applicable pleading and legal standards.

### 26 **A. Federal Rule of Civil Procedure 8**

27 Pursuant to [Federal Rule of Civil Procedure 8](#), a complaint must contain “a short and  
28 plain statement of the claim showing that the pleader is entitled to relief.” [Fed. R. Civ. P. 8\(a\)](#).

1 As noted above, detailed factual allegations are not required, but “[t]hreadbare recitals of the  
2 elements of a cause of action, supported by mere conclusory statements, do not suffice.” [Iqbal](#),  
3 [556 U.S. at 678](#) (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as  
4 true, to ‘state a claim to relief that is plausible on its face.’” [Iqbal](#), [556 U.S. at 678](#) (quoting  
5 [Twombly](#), [550 U.S. at 555](#)). While factual allegations are accepted as true, legal conclusions are  
6 not. [Id.](#); see also [Twombly](#), [550 U.S. at 556–557](#); [Moss](#), [572 F.3d at 969](#).

7 Plaintiff’s complaint is conclusory and lacks sufficient factual allegations to state a  
8 cognizable claim. Although [Rule 8](#) demands a short and plain statement, Plaintiff’s complaint  
9 must include enough facts to support a claim.

### 10 **B. Failure to Protect**

11 Plaintiff appears to allege a claim against Correctional Officer Bravo for failure to protect  
12 him from an assault by other inmates. Prison officials are required “to take reasonable steps to  
13 protect inmates from physical abuse.” [Hoptowitz v. Ray](#), [682 F.2d 1237, 1250 \(9th Cir. 1982\)](#)  
14 (abrogated on other grounds by [Sandin v. O’Connor](#), [515 U.S. 472, 115 S. Ct. 2293 \(1995\)](#)). To  
15 state a claim under the Eighth Amendment, the plaintiff must show that the defendant acted with  
16 deliberate indifference. [Thomas v. Ponder](#), [611 F.3d 1144, 1150 \(9th Cir. 2010\)](#) (citations  
17 omitted). Deliberate indifference requires a showing that “prison officials were aware of a  
18 “substantial risk of serious harm” to an inmate’s health or safety and that there was no  
19 “reasonable justification for the deprivation, in spite of that risk.” [Id.](#) (quoting [Farmer v.](#)  
20 [Brennan](#), [511 U.S. 825, 837, 844, 114 S. Ct. 1970](#), 1979, 1982 (1994)). Additionally, an officer  
21 can only be held liable for failing to intercede if he had a realistic opportunity to intercede and  
22 failed to do so. [Cunningham v. Gates](#), [229 F.3d 1271, 1289-90 \(9th Cir. 2000\)](#).

23 Here, Plaintiff’s complaint against Defendant Bravo is based on conclusory statements.  
24 Plaintiff has not alleged sufficient facts to demonstrate that Defendant Bravo was aware that  
25 Plaintiff was at a substantial risk of serious harm from an assault by other inmates or that he had  
26 realistic opportunity to intercede. Plaintiff therefore fails to state a cognizable claim for failure  
27 to protect. As discussed below, Plaintiff will be given leave to cure this deficiency.

