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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BILLY RAE SHA'NEE MALDONADO,

Plaintiff,

vs.

R. H. TRIMBLE, et al.,

Defendants

Case No. 1:12 cv 01088 AWI GSA PC

ORDER DISMISSING COMPLAINT AND  
GRANTING PLAINTIFF LEAVE TO FILE  
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE  
IN THIRTY DAYS

**I. Screening Requirement**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

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

1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534  
3 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a  
4 short and plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R.  
5 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s  
6 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the  
7 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,  
8 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not  
9 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union  
10 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268  
11 (9th Cir. 1982)).

## 12 **II. Plaintiff’s Claims**

13 Plaintiff, an inmate in the custody of the California Department of Corrections (CDCR) and  
14 Rehabilitation at Mule Creek State Prison, brings this civil rights action against defendant CDCR  
15 officials employed by the CDCR at Pleasant Valley State Prison. Plaintiff names as defendants  
16 Warden Trimble, J. Lozano, Chief of Appeals, and three different Appeals Coordinators.  
17 Plaintiff claims that he has been retaliated against in violation of the First Amendment and has  
18 been subjected so sexual harassment.

19 Plaintiff’s complaint consists of rambling allegations. Plaintiff refers to a pat down  
20 search, and conduct by a correctional officer (C/O Ramirez) that, in Plaintiff’s view, constituted  
21 sexual harassment. Plaintiff alleges that on November 27, 2011, he was subjected to a pat down  
22 search after leaving the chow hall. Plaintiff alleges that the next day, C/O Ramirez was “flexing  
23 his chest while his chin was up in the air” after following Plaintiff in the chow hall. Plaintiff  
24 filed an inmate grievance regarding Ramirez’s conduct.

25 The balance of Plaintiff’s complaint consists of legal conclusions and vague references to  
26 conduct by various correctional officials. Plaintiff’s central claim appears to be that the  
27 grievance process did not give him any satisfaction.

1 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted  
2 under color of state law and (2) the defendant deprived him of rights secured by the Constitution  
3 or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person  
4 deprives another of a constitutional right, where that person ‘does an affirmative act, participates  
5 in another’s affirmative acts, or omits to perform an act which [that person] is legally required to  
6 do that causes the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978,  
7 988 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he  
8 ‘requisite causal connection can be established not only by some kind of direct, personal  
9 participation in the deprivation, but also by setting in motion a series of acts by others which the  
10 actor knows or reasonably should know would cause others to inflict the constitutional injury.’”  
11 Id. (quoting Johnson at 743-44).

12 **A. Sexual Harassment**

13 Sexual harassment or abuse of an inmate by a corrections officer is a violation of the  
14 Eighth Amendment. See Schwenk v. Hartford, 204 F.3d 1187, 1197 (9<sup>th</sup> Cir. 2000)(“In the  
15 simplest and most absolute of terms . . . prisoners [have a clearly established Eighth Amendment  
16 right] to be free from sexual abuse . . .”) see also Women Prisoners of the Dist. of Columbia  
17 Dep’t. of Corr. v. District of Columbia, 877 F.Supp. 634, 665 (D.C. 1994)(“[U]nsolicited  
18 touching of . . . prisoner’s [genitalia] by prison employees are ‘simply not part of the penalty that  
19 criminal offenders pay for their offenses against society’”(quoting Farmer v. Brennan, 511 U.S.  
20 825, 834 (1994)).

21 In evaluating a prisoner’s claim, courts consider whether “the officials act[ed] with a  
22 sufficiently culpable state of mind” and if the alleged wrongdoing was objectively “harmful  
23 enough” to establish a constitutional violation.” Hudson v. McMillian, 503 U.S. 1, 8 (1992).  
24 Here, the facts alleged indicate, at most, that Plaintiff was subjected to a single pat down search.  
25 That, in Plaintiff’s view, the search was sexual, does not state a claim for relief. Plaintiff must  
26 allege facts that indicate that he was touched in a sexual manner. Plaintiff has failed to do so  
27 here.



1 describe where that defendant is employed and in what capacity, and explain how that defendant  
2 acted under color of state law. Plaintiff should state clearly, in his own words, what happened.  
3 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described  
4 by Plaintiff. Plaintiff has failed to do so here.

5 **III. Conclusion and Order**

6 The Court has screened Plaintiff's complaint and finds that it does not state any claims  
7 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the  
8 opportunity to file an amended complaint curing the deficiencies identified by the Court in this  
9 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he  
10 may not change the nature of this suit by adding new, unrelated claims in his amended  
11 complaint. George, 507 F.3d at 607 (no "buckshot" complaints).

12 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what  
13 each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal  
14 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must  
15 be [sufficient] to raise a right to relief above the speculative level . . . ." Bell Atlantic Corp. v.  
16 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

17 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
18 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,  
19 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded  
20 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an  
21 original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d  
22 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord  
23 Forsyth, 114 F.3d at 1474.

24 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 25 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a  
26 claim;
- 27 2. The Clerk's Office shall send to Plaintiff a complaint form;

