

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD EARL GEORGE,
Plaintiff,
vs.
E. CHAPA,
Defendant

Case No. 1:12 cv 01788 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. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).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

¹ Plaintiff filed a consent to proceed before a magistrate judge on November 21, 2012.

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
2 1915(e)(2)(B)(ii).

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
5 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
6 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
7 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
8 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
9 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
10 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
11 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
12 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
13 (9th Cir. 1982)).

14 **II. Plaintiff’s Claims**

15 Plaintiff, an inmate in the custody of the California Department of Corrections and
16 Rehabilitation (CDCR) at the RJ Donovan Correctional Facility, brings this action against
17 Defendant Correctional Officer C. Chapa, an employee of the CDCR at North Kern State Prison
18 in Delano, where the events at issue occurred.

19 Plaintiff’s statement of claim consists of a rambling narrative, asserting generalized
20 allegations of staff misconduct. The only specific conduct charged to Defendant is that he
21 denied Plaintiff a shower on March 28, 2012, because Plaintiff was hearing impaired.

22 **A. Eighth Amendment**

23 To constitute cruel and unusual punishment in violation of the Eighth Amendment, prison
24 conditions must involve “the wanton and unnecessary infliction of pain” Rhodes v.
25 Chapman, 452 U.S. 337, 347 (1981). Although prison conditions may be restrictive and harsh,
26 prison officials must provide prisoners with food, clothing, shelter, sanitation, medical care, and
27 personal safety. Id.; Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986); Hoptowit v.

1 Ray, 682 F.2d 1237, 1246 (9th Cir. 1982). Where a prisoner alleges injuries stemming from
2 unsafe conditions of confinement, prison officials may be held liable only if they acted with
3 “deliberate indifference to a substantial risk of serious harm.” Frost v. Agnos, 152 F.3d 1124,
4 1128 (9th Cir. 1998).

5 The deliberate indifference standard involves an objective and a subjective prong. First,
6 the alleged deprivation must be, in objective terms, “sufficiently serious” Farmer v.
7 Brennan, 511 U.S. 825, 834 (1994)(citing Wilson v. Seiter, 501 U.S. 294, 298 (1991)). Second,
8 the prison official must “know of and disregard an excessive risk to inmate health or
9 safetyFarmer, 511 U.S. at 837. Thus, a prison official may be held liable under the Eighth
10 Amendment for denying humane conditions of confinement only if he knows that inmates face a
11 substantial risk of harm and disregards that risk by failing to take reasonable measures to abate it.
12 Id. at 837-45. Prison officials may avoid liability by presenting evidence that they lacked
13 knowledge of the risk, or by presenting evidence of a reasonable, albeit unsuccessful, response to
14 the risk. Id. at 844-45. Mere negligence on the part of prison official is not sufficient to establish
15 liability, but rather, the official’s conduct must have been wanton. Id. at 835; Frost, 152 F.3d at
16 1128.

17 Here, the Court finds Plaintiff’s allegations to be vague. Plaintiff sets forth generalized
18 allegations regarding the conditions of his confinement. The only specific allegation regarding
19 Defendant’s conduct is that, on one occasion, he denied Plaintiff a shower. Such an allegation
20 falls far short of deliberate indifference. To state a claim under section 1983, a plaintiff must
21 allege that (1) the defendant acted under color of state law and (2) the defendant deprived him of
22 rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d
23 1178, 1185 (9th Cir. 2006). “A person deprives another of a constitutional right, where that
24 person ‘does an affirmative act, participates in another’s affirmative acts, or omits to perform an
25 act which [that person] is legally required to do that causes the deprivation of which complaint is
26 made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007) (quoting Johnson v. Duffy, 588
27 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection can be established not only
28

1 by some kind of direct, personal participation in the deprivation, but also by setting in motion a
2 series of acts by others which the actor knows or reasonably should know would cause others to
3 inflict the constitutional injury.” Id. (quoting Johnson at 743-44). Plaintiff must allege facts
4 indicating that Defendant was aware of a specific harm to Plaintiff, and acted with deliberate
5 indifference to that harm. Plaintiff has failed to do so here. The complaint should therefore be
6 dismissed. Plaintiff will, however, be granted leave to file an amended complaint.

7 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
8 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
9 that defendant is employed and in what capacity, and explain how that defendant acted under
10 color of state law. Plaintiff should state clearly, in his or her own words, what happened.
11 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described
12 by Plaintiff. Plaintiff has failed to do so here.

13 **III. Conclusion and Order**

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

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

25 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
26 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
27 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
28

1 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
2 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
3 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
4 Forsyth, 114 F.3d at 1474.

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

- 6 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a
7 claim;
- 8 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 9 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
10 an amended complaint;
- 11 4. Plaintiff may not add any new, unrelated claims to this action via his amended
12 complaint and any attempt to do so will result in an order striking the amended
13 complaint; and
- 14 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
15 action be dismissed, with prejudice, for failure to state a claim.

16
17
18
19
20
21
22 IT IS SO ORDERED.

23 Dated: February 27, 2014

24 /s/ Gary S. Austin

25 UNITED STATES MAGISTRATE JUDGE