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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY JUNELL GACHETT,)	1:13cv00139 DLB PC
)	
Plaintiff,)	ORDER DISMISSING COMPLAINT
)	WITH LEAVE TO AMEND
vs.)	THIRTY-DAY DEADLINE
)	
GIPSON, et al.,)	
)	
Defendants.)	

Plaintiff Troy Junell Gachett (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action. Plaintiff filed this action on January 30, 2013. He names California State Prison, Corcoran (“CSP”) Warden Gipson, CSP Chief Deputy Warden R. S. Lambert, and CSP Counselor Mascarenas as Defendants.¹

A. SCREENING REQUIREMENT

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.

¹ Plaintiff consented to the jurisdiction of the United States Magistrate Judge on February 8, 2013.

1 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
2 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
3 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.

4 § 1915(e)(2)(B)(ii).

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

13
14 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or
15 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d
16 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);
17 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the
18 actions or omissions of each named defendant to a violation of his rights; there is no respondeat
19 superior liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County,
20 Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235
21 (9th Cir. 2009); Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to
22 state a plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572
23 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this
24 plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.
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1 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

2 Plaintiff’s complaint is somewhat difficult to understand. It appears that Plaintiff, who is
3 incarcerated at CSP, attended an Institutional Classification Committee on July 18, 2012. At the
4 hearing, Plaintiff alleges that Defendant Mascarenas gave “biased and prejudiced”
5 recommendations that Plaintiff cell with an inmate with incompatible safety concerns. Plaintiff
6 rejected the cell mate and Defendant Lambert deemed Plaintiff a program failure. Defendant
7 Lambert also ordered staff to seize and destroy his television and property. Plaintiff contends
8 that this was an illegal destruction of allowable property and was done to intimidate Plaintiff.
9 Plaintiff contends that this was a violation of his Due Process rights under the Fourteenth
10 Amendment.
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12 Plaintiff states that Defendant Gipson, on August 22, 2012, assessed five additional terms
13 in the Secured Housing Unit (“SHU”). He contends that this is cruel and unusual punishment in
14 violation of the Eighth Amendment.

15 For relief, Plaintiff requests that the Court remove him from program failure status,
16 restore his privileges and order the return of his television and property. Plaintiff also requests
17 monetary damages.

18 **C. ANALYSIS**

19 1. Due Process

20 The Due Process Clause of the Fourteenth Amendment of the United States Constitution
21 protects Plaintiff from being deprived of property without due process of law, Wolff v.
22 McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963 (1974), and Plaintiff has a protected interest in his
23 personal property, Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). Authorized, intentional
24 deprivations of property are actionable under the Due Process Clause, see Hudson v. Palmer, 468
25 U.S. 517, 532, n.13, 104 S.Ct. 3194 (1984); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985),
26 but the Due Process Clause is violated only when the agency “prescribes and enforces forfeitures
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1 of property without underlying statutory authority and competent procedural protections,”
2 Nevada Dept. of Corrections v. Greene, 648 F.3d 1014, 1019 (9th Cir. 2011) (citing Vance v.
3 Barrett, 345 F.3d 1083, 1090 (9th Cir. 2003)) (internal quotations omitted), *cert. denied*, 132
4 S.Ct. 1823 (2012).

5 Plaintiff fails to provide sufficient facts to state a claim for which relief may be granted.
6 While Plaintiff alleges that his television and personal property were confiscated, he fails to
7 allege any facts supporting a claim that he was denied the procedural process he was due. The
8 fact that Plaintiff’s personal property was confiscated and has yet to be returned, alone, is not
9 sufficient to support a plausible due process claim. Greene, 648 F.3d at 1019.

10 Moreover, the sparse nature of Plaintiff’s writing makes it unclear whether Plaintiff
11 contends that his property was taken pursuant to an authorized act, or an improper, unauthorized
12 act. If it is the later, Plaintiff is advised that the Due Process Clause is not violated by the
13 random, unauthorized deprivation of property so long as the state provides an adequate post-
14 deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533, 104 S.Ct. 3194 (1984); Barnett v.
15 Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994). Plaintiff has an adequate post-deprivation remedy
16 under California law and therefore, he may not pursue a due process claim arising out of the
17 unlawful confiscation of his personal property. Barnett, 31 F.3d at 816-17 (citing Cal. Gov’t
18 Code §§810-895)
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20 Accordingly, Plaintiff fails to state a claim against Defendant Lambert. He will be
21 permitted leave to amend.
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23 2. Defendant Mascarenas

24 Plaintiff’s claim against Defendant Mascarenas is unclear. It appears that Plaintiff takes
25 issue with Defendant Mascarenas’ recommended cell mate, which he refused because of safety
26 concerns. As written, Plaintiff’s allegations are too vague to state a constitutional claim against
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1 Defendant Mascarenas. The Court provides the following Eighth Amendment standards for
2 informational purposes.

3 The Eighth Amendment's prohibition against cruel and unusual punishment protects
4 prisoners not only from inhumane methods of punishment but also from inhumane conditions of
5 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.
6 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347,
7 101 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and
8 often are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of
9 pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).
10 Thus, conditions which are devoid of legitimate penological purpose or contrary to evolving
11 standards of decency that mark the progress of a maturing society violate the Eighth
12 Amendment. Morgan, 465 F.3d at 1045 (quotation marks and citations omitted); Hope v. Pelzer,
13 536 U.S. 730, 737, 122 S.Ct. 2508 (2002); Rhodes, 452 U.S. at 346.

15 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
16 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th
17 Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains
18 while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks
19 omitted). To maintain an Eighth Amendment claim, a prisoner must show that prison officials
20 were deliberately indifferent to a substantial risk of harm to his health or safety. E.g., Farmer,
21 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels,
22 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731;
23 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). The failure of prison officials to protect
24 inmates from attacks by other inmates may rise to the level of an Eighth Amendment violation
25 where prison officials know of and disregard a substantial risk of serious harm to the plaintiff.
26 E.g., Farmer, 511 U.S. at 847; Hearns, 413 F.3d at 1040.

1 3. Eighth Amendment Cruel and Unusual Punishment

2 Plaintiff contends that Defendant Gipson violated the Eighth Amendment by imposing
3 additional terms in the SHU. However, in the civil rights context, the imposition of a SHU term,
4 alone, is insufficient to state an Eighth Amendment claim. If Plaintiff contends that his
5 conditions of confinement violated the Eighth Amendment while he served his SHU term, he
6 may amend pursuant to the Eighth Amendment standards above.

7 To the extent Plaintiff wishes to challenge his SHU term, and the invalidation of the term
8 would result in an earlier release, Plaintiff is advised that his sole federal remedy is a writ of
9 habeas corpus. When a prisoner challenges the legality or duration of his custody, or raises a
10 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is a
11 writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d
12 874 (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991). Moreover, when seeking damages for an
13 allegedly unconstitutional conviction or imprisonment, “a § 1983 plaintiff must prove that the
14 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
15 invalid by a state tribunal authorized to make such determination, or called into question by a
16 federal court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck v. Humphrey, 512
17 U.S. 477, 487-88 (1994). “A claim for damages bearing that relationship to a conviction or
18 sentence that has not been so invalidated is not cognizable under § 1983.” Id. at 488.

19 Insofar as Plaintiff alleges that his term violates due process, he is advised of the
20 following standards. “Prison disciplinary proceedings are not part of a criminal prosecution, and
21 the full panoply of rights due a defendant in such proceedings does not apply.” Wolff v.
22 McDonnell, 418 U.S. 539, 556, 94 S.Ct. 2963 (1974). With respect to prison disciplinary
23 proceedings, the minimum procedural requirements that must be met are: (1) written notice of
24 the charges; (2) at least 24 hours between the time the prisoner receives written notice and the
25 time of the hearing, so that the prisoner may prepare his defense; (3) a written statement by the
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1 fact finders of the evidence they rely on and reasons for taking disciplinary action; (4) the right
2 of the prisoner to call witnesses in his defense, when permitting him to do so would not be
3 unduly hazardous to institutional safety or correctional goals; and (5) legal assistance to the
4 prisoner where the prisoner is illiterate or the issues presented are legally complex. Id. at 563-
5 71. As long as the five minimum Wolff requirements are met, due process has been satisfied.
6 Walker v. Sumner, 14 F.3d 1415, 1420 (9th Cir. 1994), abrogated on other grounds by Sandin v.
7 Connor, 515 U.S. 472 (1995).

8 **D. CONCLUSION AND ORDER**

9 Plaintiff's complaint fails to state any cognizable claims against any Defendants.

10 Plaintiff will be permitted to amend his complaint, though he must follow the guidelines
11 above. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446,
12 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new,
13 unrelated claims in his amended complaint. George, 507 F.3d at 607 (no "buckshot"
14 complaints).

15 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
16 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, Iqbal,
17 556 U.S. at 676-77. Although accepted as true, the "[f]actual allegations must be [sufficient] to
18 raise a right to relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations
19 omitted).

20 Finally, an amended complaint supersedes the prior complaint, Forsyth v. Humana, Inc.,
21 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and it
22 must be "complete in itself without reference to the prior or superseded pleading." Local Rule
23 220.

24 Accordingly, it is HEREBY ORDERED that:

25 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
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