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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
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7 JASON J. ROCHA,

8 Plaintiff,

9 vs.

10 MERCED CO. SHERIFF'S DEPT., et al.,

11 Defendants

Case No. 1:13 cv 01047 GSA PC

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

AMENDED COMPLAINT DUE
IN THIRTY DAYS

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14 **I. Screening Requirement**

15 Plaintiff is a former Merced County Jail inmate proceeding pro se and in forma pauperis
16 in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate
17 judge jurisdiction pursuant to 28 U.S.C. § 636(c).¹

18 The Court is required to screen complaints brought by prisoners seeking relief against a
19 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
20 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
21 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
22 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
23 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
24 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
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28 ¹ Plaintiff filed a consent to proceed before a magistrate judge on July 29, 2013 (ECF No. 5).

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, currently an inmate in custody at the Stanislaus County Jail, brings this civil
16 rights action against the Merced County Sheriff’s Department and Does 1-10. This lawsuit
17 stems from events that occurred while Plaintiff was housed at the Merced County Jail.² Plaintiff
18 sets forth claims of deliberate indifference, racial discrimination and deprivation of personal
19 property.

20 Plaintiff alleges that, at some point, he was housed in a dormitory type housing area. The
21 housing area was equipped with a panic button that was used to summon emergency assistance.
22 Plaintiff alleges that he was the target of a “group assault.” Some time between the start of the
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26 ² Plaintiff does not indicate whether he was a pretrial detainee or serving a sentence of
27 confinement while housed at the Merced County Jail. Because Plaintiff claims deliberate indifference in violation of
28 the Eighth Amendment, the Court will presume he was serving a sentence of confinement pursuant to a judgment of
conviction. In his amended complaint, Plaintiff shall inform the Court of his status while housed at the Merced
County Jail.

1 assault and Plaintiff's loss of consciousness, he pushed the button. There was no response. Jail
2 staff heard the noise, and deputies responded. Plaintiff was taken to medical and treated.
3 Approximately seven hours later, Plaintiff was returned to the same unit. Plaintiff advised the
4 deputies that the same inmates that attacked him were in there. Plaintiff, who is white, was
5 attacked by black and hispanic inmates. Plaintiff also lost items of his personal property when
6 we was removed from the unit for medical assistance. Plaintiff later learned that the panic alarm
7 did not work.

8 **A. Deliberate Indifference**

9 The Eighth Amendment requires prison officials to take reasonable measures to
10 guarantee the safety of inmates, which has been interpreted to include a duty to protect prisoners.
11 Farmer v. Brennan, 511 U.S. 825, 832-33 (1994); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th
12 Cir. 2005). A prisoner seeking relief for an Eighth Amendment violation must show that the
13 officials acted with deliberate indifference to the threat of serious harm or injury to an inmate.
14 Gibson v. County of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002). "Deliberate indifference" has
15 both subjective and objective components. A prison official must "be aware of facts from which
16 the inference could be drawn that a substantial risk of serious harm exists and . . . must also draw
17 the inference." Farmer, 511 U.S. at 837. Liability may follow only if a prison official "knows
18 that inmates face a substantial risk of serious harm and disregards that risk by failing to take
19 reasonable measures to abate it." Id. at 847.

20 Here, Plaintiff fails to allege facts from which an inference could be drawn that any of the
21 named defendants knew of a specific harm to Plaintiff and disregarded that harm. To state a
22 claim under section 1983, a plaintiff must allege that (1) the defendant acted under color of state
23 law and (2) the defendant deprived him of rights secured by the Constitution or federal law.
24 Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). "A person deprives
25 another of a constitutional right, where that person 'does an affirmative act, participates in
26 another's affirmative acts, or omits to perform an act which [that person] is legally required to do
27 that causes the deprivation of which complaint is made.'" Hydrick v. Hunter, 500 F.3d 978, 988

1 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite
2 causal connection can be established not only by some kind of direct, personal participation in
3 the deprivation, but also by setting in motion a series of acts by others which the actor knows or
4 reasonably should know would cause others to inflict the constitutional injury.’” Id. (quoting
5 Johnson at 743-44). Plaintiff has not specifically identified any individual defendant, nor has
6 Plaintiff alleged any facts indicating that any individual knew of and disregarded a risk to
7 Plaintiff’s safety. Plaintiff has not alleged any facts to support an allegation that any individual
8 defendant knew before the attack that Plaintiff faced any danger. Nor has Plaintiff alleged any
9 facts, other than differing racial ethnicities, to suggest that housing Plaintiff in a unit with
10 inmates of other races placed him in particular danger. In order to hold individual defendant
11 liable, Plaintiff must allege facts indicating that each defendant was aware of a specific harm to
12 Plaintiff, and acted with deliberate indifference to that harm. Plaintiff has failed to do so here.
13 The complaint should therefore be dismissed. Plaintiff will, however, be granted leave to file an
14 amended complaint.

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

21 **B. Racial Discrimination**

22 The Equal Protection Clause requires that persons who are similarly situated be treated
23 alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Shakur v.
24 Schiriro, 514 F.3d 878, 891 (9th Cir. 2008). A plaintiff may establish an equal protection claim
25 by showing that the plaintiff was intentionally discriminated against on the basis of plaintiff’s
26 membership in a protected class. Comm. Concerning Cmty. Improvement v. City of Modesto,
27 583 F.3d 960, 702-03 (9th Cir. 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), or

1 that similarly situated individuals were intentionally treated differently without a rational
2 relationship to a legitimate state purpose, Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 601-
3 02 (2008); Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v.
4 Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North Pacifica LLC v. City of Pacifica, 526 F.3d 478,
5 486 (9th Cir. 2008). Plaintiff has failed to allege any facts indicating that similarly situated
6 individual were treated differently without a rational relationship to a legitimate state interest, or
7 that he was a member of a protected class. This claim should therefore be dismissed.

8 **C. Property**

9 Prisoners have a protected interest in their personal property. Hansen v. May, 502 F.2d
10 728, 730 (9th Cir. 1974). However, while an authorized, intentional deprivation of property is
11 actionable under the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532, n.13
12 (1984)(citing Logan v. Zimmerman Brush Co., 455 U.S. 435-36 (1982)); Quick v. Jones, 754
13 F.2d 1521, 1524 (9th Cir. 1985), “[a]n unauthorized intentional deprivation of property by a state
14 employee does not constitute a violation of the procedural requirements of the Due Process
15 Clause of the Fourteenth Amendment if a meaningful post-deprivation remedy for the loss is
16 available.” Hudson, 468 U.S. at 533.

17 Here, the allegations clearly indicate that the deprivation of property was unauthorized.
18 California law provides an adequate post-deprivation remedy for any property deprivations. See
19 Ca. Gov’t Code §§ 810-895; Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir. 1994). This claim
20 should therefore be dismissed.

21 **III. Conclusion and Order**

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

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

6 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
7 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
8 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
9 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an
10 original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d
11 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
12 Forsyth, 114 F.3d at 1474.

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

- 14 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a
15 claim;
- 16 2. The Clerk's Office shall send to Plaintiff a complaint form;
- 17 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
18 an amended complaint;
- 19 4. Plaintiff may not add any new, unrelated claims to this action via his amended
20 complaint and any attempt to do so will result in an order striking the amended
21 complaint; and
- 22 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,
23 with prejudice, for failure to state a claim.

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25 IT IS SO ORDERED.

26 Dated: November 4, 2014

27 /s/ Gary S. Austin

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UNITED STATES MAGISTRATE JUDGE