

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Case No. 1:13-cv-01755-MJS

Plaintiff,

ORDER DISMISSING PLAINTIFF'S
COMPLAINT, WITH LEAVE TO AMEND,
FOR FAILURE TO STATE A CLAIM

V.

B. J. WEAVER, et al.,

ECF No. 1

Defendants.

**AMENDED COMPLAINT DUE WITHIN
THIRTY DAYS**

On October 23, 2013, Zane Hubbard (“Plaintiff”), an individual proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 8.)¹

Plaintiff's Complaint is now before the Court for screening.

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¹ Plaintiff consented to Magistrate Judge jurisdiction (ECF No. 8), and then filed a notice that he declined such jurisdiction (ECF No. 9). Once a civil case is referred to a Magistrate Judge under 28 U.S.C. § 636(c), the reference can be withdrawn by the Court only “for good cause shown on its own motion, or under extraordinary circumstances shown by any party.” *Dixon v. Ylst*, 990 F.2d 478, 480 (9th Cir. 1993); 28 U.S.C. § 636(c); Fed. R. Civ. P. 73(b). Plaintiff has failed to show extraordinary circumstances for withdrawing Magistrate Judge jurisdiction.

1 **I. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. 28
4 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the
5 prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a
6 claim upon which relief may be granted, or that seek monetary relief from a defendant
7 who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any
8 filing fee, or any portion thereof, that may have been paid, the court shall dismiss the
9 case at any time if the court determines that . . . the action or appeal . . . fails to state a
10 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

11 A complaint must contain “a short and plain statement of the claim showing that
12 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
13 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
14 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.
15 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).
16 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
17 plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).
18 Facial plausibility demands more than the mere possibility that a defendant committed
19 misconduct and, while factual allegations are accepted as true, legal conclusions are
20 not. *Iqbal*, 556 U.S. at 678.

21 **II. PLAINTIFF’S CLAIMS**

22 Plaintiff is currently housed at the California State Prison in Corcoran, California
23 (“CSP-COR”), where the events at issue in his Complaint occurred. Plaintiff names the
24 following individuals as defendants: 1) B. J. Weaver, Facility 4B Captain at CSP-COR,
25 and 2) A. Pacillas, Correctional Counselor at Facility 4B at CSP-COR. Plaintiff alleges
26 that these Defendants violated his due process rights under the Fourteenth Amendment
27 and his rights under the First, Fourth, Fifth, and Eighth Amendments. Plaintiff also
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1 alleges that Defendants violated rights he was entitled to under California Department of
2 Corrections and Rehabilitation policies.

3 Plaintiff's allegations may be summarized as follows:

4 Plaintiff was issued Rules Violation Reports ("RVRs") in September 2013, one for
5 behavior that could lead to violence and another for destruction of property. (Compl. at
6 6.) Also in September 2013, Plaintiff was placed on "cell management status" and
7 deprived of his due process. (Id. at 7.) Plaintiff was housed in a cell with an unsanitary
8 mattress and other inadequate conditions even though he has Valley Fever. (Id. at 7-8.)
9 Plaintiff was not provided with a cup for water and was forced to eat off of paper plates
10 for several days. (Id. at 8.) Plaintiff's medications were confiscated. (Id.) Plaintiff was
11 also given an improper classification. (Id.)

12 Plaintiff asks to be transferred to Pelican Bay and for \$50,000 in compensatory
13 damages.

14 **III. ANALYSIS**

15 **A. 42 U.S.C. § 1983 Claims**

16 42 U.S.C. § 1983 "provides a cause of action for the 'deprivation of any rights,
17 privileges, or immunities secured by the Constitution and laws' of the United States."
18 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). §
19 1983 is not itself a source of substantive rights, but merely provides a method for
20 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-
21 94 (1989).

22 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)
23 that a right secured by the Constitution or laws of the United States was violated, and
24 (2) that the alleged violation was committed by a person acting under the color of state
25 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
26 1243, 1245 (9th Cir. 1987).

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1 B. Linkage

2 Under § 1983, Plaintiff must demonstrate that each named defendant personally
3 participated in the deprivation of his rights. Ashcroft v. Iqbal, 556 U.S. 662, 676-77
4 (2009); Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010);
5 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297
6 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed on supervisory personnel
7 under the theory of respondeat superior, as each defendant is only liable for his or her
8 own misconduct. Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may
9 only be held liable if they “participated in or directed the violations, or knew of the
10 violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th
11 Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v.
12 Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School Board
13 of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189,
14 1204 (9th Cir. 1997).

15 Plaintiff has not tied any Defendant to any particular claim or allegation. In order
16 to state a cognizable claim, Plaintiff must explain how each Defendant personally
17 participated in a deprivation of his rights. Plaintiff will be permitted the opportunity to file
18 an amended complaint clarifying the factual bases for liability against each named
19 Defendant.

20 Plaintiff’s amended complaint need not and should not be lengthy, Fed. R. Civ. P.
21 8(a)(2), but it must specify what each defendant did or did not do that led to the violation
22 of Plaintiff’s rights. Conclusory assertions of personal involvement or liability will not
23 suffice. Iqbal, 556 U.S. at 676-677. The amended complaint should focus on providing
24 the Court with information as to who violated his rights, how and when they violated his
25 rights, what circumstances led up to the violations, what explanation was given for the
26 action which Plaintiff claims constituted the violations, and why the acts complained of
27 rise to the level of a constitutional violation under the standards provided below.

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1 **C. Plaintiff's Possible Claims**

2 It appears Plaintiff wishes to allege claims under the First, Fourth, Fifth, and
3 Eighth Amendments and under the due process clause of the Fourteenth Amendment.
4 Plaintiff also alleges Defendants violated rights under California Department of
5 Corrections and Rehabilitation policies. The Court is unable to determine whether
6 Plaintiff has stated a cognizable claim because he does not provide sufficient factual
7 detail as to how and any one individual violated his rights. The Court will set out below
8 the legal standards for alleging claims such as those Plaintiff indicates he wants to
9 assert.

10 1. First Amendment Retaliation

11 “Within the prison context, a viable claim of First Amendment retaliation entails
12 five basic elements: (1) An assertion that a state actor took some adverse action
13 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such
14 action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action
15 did not reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408
16 F.3d 559, 567-68 (9th Cir. 2005).

17 The second element of a prisoner retaliation claim focuses on causation and
18 motive. See Brodheim v. Cry, 584 F.3d 1262, 1271 (9th Cir. 2009). A plaintiff must
19 show that his protected conduct was a “substantial” or ‘motivating’ factor behind the
20 defendant’s conduct.” Id. (quoting Soriano’s Gasco, Inc. v. Morgan, 874 F.2d 1310,
21 1314 (9th Cir. 1989). Although it can be difficult to establish the motive or intent of the
22 defendant, a plaintiff may rely on circumstantial evidence. Bruce v. Ylst, 351 F.3d 1283,
23 1289 (9th Cir. 2003) (finding that a prisoner established a triable issue of fact regarding
24 prison officials’ retaliatory motives by raising issues of suspect timing, evidence, and
25 statements); Hines v. Gomez, 108 F.3d 265, 267-68 (9th Cir. 1997); Pratt v. Rowland,
26 65 F.3d 802, 808 (9th Cir. 1995) (“timing can properly be considered as circumstantial
27 evidence of retaliatory intent”).
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1 In terms of the third prong, filing a grievance is a protected action under the First
2 Amendment. Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989).
3 Pursuing a civil rights legal action is also protected under the First Amendment. Rizzo
4 v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985).

5 With respect to the fourth prong, “[it] would be unjust to allow a defendant to
6 escape liability for a First Amendment violation merely because an unusually
7 determined plaintiff persists in his protected activity. . . .” Mendocino Envtl. Ctr. v.
8 Mendocino County, 192 F.3d 1283, 1300 (9th Cir. 1999). The correct inquiry is to
9 determine whether an official’s acts would chill or silence a person of ordinary firmness
10 from future First Amendment activities. Rhodes, 408 F.3d at 568-69 (citing Mendocino
11 Envtl. Ctr., 192 F.3d at 1300).

12 With respect to the fifth prong, a prisoner must affirmatively allege that “the
13 prison authorities’ retaliatory action did not advance legitimate goals of the correctional
14 institution or was not tailored narrowly enough to achieve such goals.” Rizzo, 778 F.2d
15 at 532.

16 2. Fourth Amendment

17 Under the Fourth Amendment, a seizure of property “occurs when there is some
18 meaningful interference with an individual’s possessory interest in that property.”
19 United States v. Jacobsen, 466 U.S. at 113. The United States Supreme Court has
20 held that “the Fourth Amendment has no applicability to a prison cell.” Hudson v.
21 Palmer, 468 U.S. 517, 536 (1984). Further, the Court noted, “[p]rison officials must be
22 free to seize from cells any articles which, in their view, disserve legitimate institutional
23 interests.” Id. at 528 n.8.

24 3. Fifth Amendment

25 “[T]he Fifth Amendment’s due process clause applies only to the federal
26 government.” Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008).

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1 4. Eighth Amendment

2 A] prison official may be held liable under the Eighth Amendment for denying
3 humane conditions of confinement only if he knows that inmates face a substantial risk
4 of serious harm and disregards that risk by failing to take reasonable measures to abate
5 it." Farmer v. Brennan, 511 U.S. 825, 847 (1994). Prison officials are required to take
6 reasonable measures to guarantee the safety of inmates and officials have a duty to
7 protect prisoners from violence at the hands of other prisoners. Farmer, 511 U.S. at
8 832–33; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998). An inmate has no
9 constitutional right, however, to enjoy a particular security classification or housing. See
10 Meachum v. Fano, 427 U.S. 215, 224–25 (1976) (no liberty interest protected by the
11 Due Process Clause is implicated in a prison's reclassification and transfer decisions);
12 see also Myron v. Terhune, 476 F.3d 716, 718 (9th Cir. 2007). Further, "[v]erbal
13 harassment or abuse . . . is not sufficient to state a constitutional deprivation[.]"
14 Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (quoting Collins v. Cundy,
15 603 F.2d 825 (10th Cir. 1979)).

16 Rather, to state a claim for threats to safety, an inmate must allege facts to
17 support that he was incarcerated under conditions posing a substantial risk of harm and
18 that prison officials were "deliberately indifferent" to those risks. Farmer, 511 U.S. at
19 834; Frost, 152 F.3d at 1128; Redman v. County of Los Angeles, 942 F.2d 1435, 1443
20 (9th Cir. 1991) (en banc). To adequately allege deliberate indifference, a plaintiff must
21 set forth facts to support that a defendant knew of, but disregarded, an excessive risk to
22 inmate safety. Farmer, 511 U.S. at 837. That is, "the official must both [have been]
23 aware of facts from which the inference could be drawn that a substantial risk of serious
24 harm exist[ed], and he must also [have] draw[n] the inference." Farmer, 511 U.S. at
25 837; Frost, 152 F.3d at 1128; Redman, 942 F.2d at 1442.

26 5. Fourteenth Amendment

27 The Due Process Clause protects Plaintiff against the deprivation of liberty
28 without the procedural protections to which he is entitled under the law. Wilkinson v.

1 Austin, 545 U.S. 209, 221 (2005). To state a claim, Plaintiff must first identify the
2 interest at stake. Wilkinson, 545 U.S. at 221. Liberty interests may arise from the Due
3 Process Clause or from state law. Id. The Due Process Clause itself does not confer
4 on inmates a liberty interest in avoiding more adverse conditions of confinement, id. at
5 221–22 (citations and quotation marks omitted), and under state law, the existence of a
6 liberty interest created by prison regulations is determined by focusing on the nature of
7 the condition of confinement at issue, id. at 222–23 (citing Sandin v. Conner, 515 U.S.
8 472, 481–84 (1995)) (quotation marks omitted). Liberty interests created by prison
9 regulations are generally limited to freedom from restraint which imposes atypical and
10 significant hardship on the inmate in relation to the ordinary incidents of prison life.
11 Wilkinson, 545 U.S. at 221 (citing Sandin, 515 U.S. at 484) (quotation marks omitted);
12 Myron v. Terhune, 476 F.3d 716, 718 (9th Cir. 2007).

13 6. Regulations

14 The violation of state tort law, state regulations, rules and policies of the
15 California Department of Corrections and Rehabilitation, or other state law is not
16 sufficient to state a claim for relief under § 1983. To state a claim under § 1983, there
17 must be a deprivation of federal constitutional or statutory rights. See Paul v. Davis,
18 424 U.S. 693 (1976). Although the court may exercise supplemental jurisdiction over
19 state law claims, plaintiff must first have a cognizable claim for relief under federal law.
20 See 28 U.S.C. § 1367.

21 **IV. CONCLUSION AND ORDER**

22 Plaintiff's Complaint fails to state a claim upon which relief may be granted under
23 § 1983. The Court will provide Plaintiff with an opportunity to amend to cure the
24 deficiencies in his claim. Lopez v. Smith, 203 F.3d at 1122, 1130 (9th Cir. 2000); Noll v.
25 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of
26 this suit by adding new, unrelated claims in his amended complaint. George v. Smith,
27 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must
2 state what each named defendant did that led to the deprivation of Plaintiff=s
3 constitutional rights, Iqbal, 556 U.S. 676-677. Although accepted as true, the "[f]actual
4 allegations must be [sufficient] to raise a right to relief above the speculative level. . . ."
5 Twombly, 550 U.S. at 555 (citations omitted).

6 Finally, an amended complaint supersedes the prior complaint, Forsyth v.
7 Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
8 (9th Cir. 1987), and it must be "complete in itself without reference to the prior or
9 superseded pleading," Local Rule 220.

10 Accordingly, it is HEREBY ORDERED that:

- 11 1. The Clerk's Office shall send Plaintiff a complaint form;
- 12 2. Plaintiff's Complaint, filed October 23, 2013, is dismissed for failure to
state a claim upon which relief may be granted under § 1983;
- 13 3. Within thirty (30) days from the date of service of this order, Plaintiff shall
file an amended complaint; and
- 14 4. If Plaintiff fails to file an amended complaint in compliance with this order,
this action will be dismissed, with prejudice, for failure to state a claim.

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16 IT IS SO ORDERED.
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19 Dated: January 29, 2014

20 /s/ Michael J. Leng
21 UNITED STATES MAGISTRATE JUDGE
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