

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

MIKEAL STINE,

 Plaintiff,

 v.

FEDERAL BUREAU OF PRISONS,

 Defendant.

CASE NO. 1:13-cv-01883-MJS

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

(ECF NO. 5)

AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff Mikeal Stine, a federal prisoner proceeding pro se, filed this civil action on November 12, 2013, pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), which provides a remedy for the violation of civil rights by federal actors. (ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 4.)

The Court issued an order severing Plaintiff's claims from the initial lawsuit filed on behalf of Plaintiff and other prisoners. (ECF No. 2.) On December 5, 2013, Plaintiff filed his First Amended Complaint. (ECF No. 5.) That amended complaint is now before the Court for screening.

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

11 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

12 The First Amended Complaint identifies the following individuals as Defendants:
13 (1) John Doe #1, United States Penitentiary Atwater (Atwater); (2) John Doe #2, Atwater;
14 and (3) an unspecified number of additional John Does.

15 Plaintiff alleges the following:

16 In 2010 Plaintiff, along with fellow inmates Pinson and Eyre, initiated a lawsuit.
17 Eyre was subsequently transferred to Atwater. Sometime in late 2012 Defendants Doe
18 #1 and Doe #2 pulled inmate Eyre into an office and began questioning him on the facts
19 of his lawsuit. (Compl. at 6.) Defendants urged Eyre to remove himself from the case.
20 They told Eyre Plaintiff was a snitch and that Eyre should not associate with him. (Id. at
21 6 and 7.)

22 Word spread that Plaintiff was a snitch. Plaintiff has since been assaulted by
23 prison gang members who have vowed to kill him at the first opportunity. According to
24 several inmates, Atwater staff have advised incoming inmates not to talk to Plaintiff as
25 doing so would put them at risk of being labeled snitches. (Id. at 7.)

26 **IV. ANALYSIS**

27 **A. Bivens Pleading Standard**

1 A complaint must contain “a short and plain statement of the claim showing that
2 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
3 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
4 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct.
5 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
6 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
7 plausible on its face.’” Id. Facial plausibility demands more than the mere possibility
8 that a defendant committed misconduct and, while factual allegations are accepted as
9 true, legal conclusions are not. Id. at 1949-50.

10 Bivens actions and actions under 42 U.S.C. § 1983 “are identical save for the
11 replacement of a state actor under § 1983 by a federal actor under Bivens.” Van Strum
12 v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991). Under Bivens, a plaintiff may sue a federal
13 officer in his or her individual capacity for damages for violating the plaintiff’s
14 constitutional rights. See Bivens, 403 U.S. at 397. To state a claim a plaintiff must
15 allege: (1) that a right secured by the Constitution of the United States was violated, and
16 (2) that the alleged violation was committed by a federal actor.

17 **B. Linkage Requirement**

18 All of the Defendants in this action are identified as John Does. Defendants Doe
19 #1 and Doe #2 are sufficiently distinguished. The third Defendant is identified in the
20 amended complaint as a group of unspecified John Does. There are no facts in the
21 pleading describing participation by these Doe Defendants in any alleged violations.
22 The Court cannot determine the viability of such claims without factual allegations
23 describing their conduct.

24 Plaintiff must establish legal liability of each person or entity for the claimed
25 violation of his rights. Liability may be imposed on an individual defendant if the plaintiff
26 can show that the defendant proximately caused the deprivation of a federally protected
27 right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). A person deprives
28 another of a constitutional right if he does an affirmative act, participates in another's

1 affirmative act or omits to perform an act which he is legally required to do, that causes
2 the deprivation of which the plaintiff complains. See id. at 633; see also, e.g., Robins v.
3 Meecham, 60 F.3d 1436, 1442 (9th Cir.1995) (prison official's failure to intervene to
4 prevent 8th Amendment violation may be basis for liability). Sweeping conclusory
5 allegations will not suffice; the plaintiff must instead "set forth specific facts as to each
6 individual defendant's" deprivation of protected rights. Leer, 844 F.2d at 634.

7 A plaintiff may use "Doe" designations to refer to defendants whose names are
8 unknown; however, he must number them in the complaint, e.g., "John Doe 1," "John
9 Doe 2," so that each numbered John Doe refers to a different specific person. Plaintiff
10 also must identify how each such named Defendant, including those named as Doe, is
11 liable for a constitutional violation. Dempsey v. Schwarzenegger, 2010 WL 1445460, *2
12 (N.D. Cal. Apr. 9, 2010); Schrubb v. Tilton, 2009 WL 3334874, *2 (N.D. Cal. Oct. 14,
13 2009).

14 Although the use of Doe defendants is acceptable to withstand dismissal of a
15 complaint at the initial review stage, using "John Doe" defendants creates its own
16 problem: those persons cannot be served with process in this action until they are
17 identified by their real names. Plaintiff must promptly take steps to discover the name of
18 the unnamed Defendants and provide that information to the Court in his amended
19 complaint. The burden remains on the Plaintiff and the Court will not undertake to
20 investigate the name and identity of the unnamed Defendants.

21 **C. Eighth Amendment**

22 The Eighth Amendment protects prisoners from inhumane methods of
23 punishment and from inhumane conditions of confinement. Morgan v. Morgensen, 465
24 F.3d 1041, 1045 (9th Cir. 2006). Although prison conditions may be restrictive and
25 harsh, prison officials must provide prisoners with food, clothing, shelter, sanitation,
26 medical care, and personal safety. Farmer v. Brennan, 511 U.S. 825, 832-33, 114 S.Ct.
27 1970 (1994) (internal citations and quotations omitted). Prison officials have a duty to
28 take reasonable steps to protect inmates from physical abuse. Farmer, 511 U.S. at 833.

1 To establish a violation of this duty, the prisoner must establish that prison
2 officials were “deliberately indifferent” to serious threats to the inmate's safety. Id. at
3 834. To demonstrate that a prison official was deliberately indifferent to a serious threat
4 to the inmate's safety, the prisoner must show that “the official [knew] of and
5 disregard[ed] an excessive risk to inmate . . . safety; the official must both be aware of
6 facts from which the inference could be drawn that a substantial risk of serious harm
7 exists, and [the official] must also draw the inference.” Id. at 837; Anderson v. County of
8 Kern, 45 F.3d 1310, 1313 (9th Cir. 1995). However, to prove knowledge of the risk, the
9 prisoner may rely on circumstantial evidence; in fact, the very obviousness of the risk
10 may be sufficient to establish knowledge. Farmer, 511 U.S. at 842.

11 Plaintiff is currently confined in United States Penitentiary, Florence ADMAX
12 (Florence). He complains that Defendants Doe #1 and Doe #2 told an inmate at Atwater
13 that Plaintiff was a snitch. This information spread throughout the prisoner population
14 and Plaintiff was subsequently threatened and attacked. He was told he would be
15 targeted regardless of where he was incarcerated.

16 Allegations that prison officials called a prisoner a “snitch” in the presence of other
17 inmates are sufficient to state a claim of deliberate indifference to an inmate's safety.
18 See Valandingham v. Bojorquez, 866 F.2d 1135, 1139 (9th Cir. 1989) (labelling as
19 “snitch” for petitioning prison and government officials for redress of grievances may
20 state viable First and Eighth Amendment claims). Plaintiff’s allegations, taken as true,
21 are sufficient to state an Eighth Amendment claim against the Defendants. Id. However,
22 as discussed above, Plaintiff’s claim must still be dismissed. The Court cannot order
23 service of the Complaint without a named Defendant. Plaintiff must discover the names
24 of either Defendant Doe #1 or Doe #2 before this action can proceed.

25 The Court will grant Plaintiff leave to amend. To state a claim, Plaintiff must
26 reallege the facts underlying his claim and identify at least one Defendant by name.

1 **D. Retaliation**

2 Allegations of retaliation against a prisoner’s First Amendment rights to speech or
3 to petition the government may support a section 1983 claim. Silva v. Di Vittorio, 658
4 F.3d 1090, 1104 (9th Cir. 2011); Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985);
5 see also Valandingham, 866 F.2d at 1135; Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir.
6 1995). “Within the prison context, a viable claim of First Amendment retaliation entails
7 five basic elements: (1) An assertion that a state actor took some adverse action against
8 an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)
9 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not
10 reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559,
11 567-68 (9th Cir. 2005); accord Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir.
12 2012); Silva, 658 at 1104; Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

13 The allegations that Defendants Doe #1 and Doe #2 tried to coerce Plaintiff’s
14 fellow inmate and co-plaintiff in response to the litigation they had filed, labeled Plaintiff
15 a snitch, and then Plaintiff was assaulted apparently because identified as a snitch is
16 sufficient to state a cognizable First Amendment retaliation claim. See Valandingham,
17 866 F.2d at 1138–40 (labelling as “snitch” for petitioning prison and government officials
18 for redress of grievances may state viable First and Eighth Amendment claims).
19 However, as discussed above, Plaintiff cannot proceed against all Doe Defendants.

20 The Court will provide Plaintiff leave to amend and reallege his cognizable Eighth
21 and First Amendment claims against named Defendants. Plaintiff is reminded that the
22 action cannot proceed without a cognizable claim alleged against a named Defendant.

23 **V. CONCLUSION AND ORDER**

24 Plaintiff’s Complaint does not state a claim for relief. The Court will grant Plaintiff
25 an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49
26 (9th Cir. 1987). If Plaintiff opts to amend, he must demonstrate that the alleged acts
27 resulted in a deprivation of his constitutional rights. Iqbal, 129 S.Ct. at 1948-49. Plaintiff
28 must set forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’”

1 Id. at 1949 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate
2 that each named Defendant personally participated in a deprivation of his rights. Jones
3 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

4 Plaintiff should note that although he has been given the opportunity to amend, it
5 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th
6 Cir. 2007). Plaintiff should carefully read this Screening Order and focus his efforts on
7 curing the deficiencies set forth above.

8 Finally, Plaintiff is advised that Local Rule 220 requires that an amended
9 complaint be complete in itself without reference to any prior pleading. As a general
10 rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375
11 F.2d 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint
12 no longer serves any function in the case. Therefore, in an amended complaint, as in an
13 original complaint, each claim and the involvement of each defendant must be
14 sufficiently alleged. The amended complaint should be clearly and boldly titled "Second
15 Amended Complaint," refer to the appropriate case number, and be an original signed
16 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.
17 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a
18 right to relief above the speculative level" Twombly, 550 U.S. at 555 (citations
19 omitted).

20 Accordingly, it is HEREBY ORDERED that:

21 1. The Clerk's Office shall send Plaintiff (1) a blank civil rights complaint form
22 and (2) a copy of his First Amended Complaint, filed December 5, 2013;

23 2. Plaintiff's First Amended Complaint is dismissed for failure to state a claim
24 upon which relief may be granted;

25 3. Plaintiff shall file an amended complaint within thirty (30) days; and

26 4. If Plaintiff fails to file an amended complaint in compliance with this order,
27
28

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

this action will be dismissed, with prejudice, for failure to state a claim and failure to comply with a court order.

IT IS SO ORDERED.

Dated: December 28, 2013

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE