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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ADAM R. LOPEZ,
Plaintiff,
v.
ALLISON, et al.,
Defendants.

Case No. 1:13-cv-02010-AWI-JLT (PC)
**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**
(Doc. 1)

I. Background

Plaintiff, Adam Lopez, is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). Plaintiff is proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint in this action on December 9, 2013. (Doc. 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, malicious, 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); 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

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1 **B. Summary of Plaintiff's Complaint**

2 It is extremely difficult to ascertain/decipher the allegations in Plaintiff's Complaint. It
3 appears as though Plaintiff has copied a complaint that has been copied several times over so as to
4 make it exceedingly difficult, if not impossible in some places, to read. The Court is able to
5 discern that Plaintiff complains of acts that occurred while he was an inmate at the California
6 Substance Abuse Treatment Facility and State Prison ("SATF") in Corcoran, California and that
7 he claims that his rights under the Eighth Amendment were violated when he was deprived of
8 outdoor/out-of-cell exercise and sunshine for eighteen months during a lockdown/modified
9 program. (Doc. 1, p. 5.) The twenty-five pages beyond page 5, which presumably contain the
10 Plaintiff's factual allegations of the events that he feels amounted to a violation of his rights under
11 the Eight Amendment are indecipherable.

12 Thus, it is unknown whether Plaintiff has, or is able to state a cognizable claim against
13 any of the named Defendants for violations to his rights under the Eighth Amendment. Plaintiff
14 may be able to state a cognizable claim and/or to amend to correct the deficiencies in his pleading
15 so as to state a cognizable claim. Thus, he is being given the applicable standards for pleadings
16 and exercise claims under the Eight Amendment and leave to file a first amended complaint.

17 **C. Pleading Requirements**

18 **1. Federal Rule of Civil Procedure 8(a)**

19 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
20 exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534
21 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain
22 statement of the claim showing that the pleader is entitled to relief . . ." Fed. R. Civ. Pro. 8(a).
23 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and
24 the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512. However, "the liberal pleading
25 standard . . . applies only to a plaintiff's factual allegations." *Neitze v. Williams*, 490 U.S. 319,
26 330 n.9 (1989). "[A] liberal interpretation of a civil rights complaint may not supply essential
27 elements of the claim that were not initially pled." *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d
28 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

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

4 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a
5 cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556
6 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

7 Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim that is
8 plausible on its face.'" *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
9 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*
10 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557. While
11 "plaintiffs [now] face a higher burden of pleadings facts . . .," *Al-Kidd v. Ashcroft*, 580 F.3d 949,
12 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally and are afforded
13 the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, courts are
14 not required to indulge unwarranted inferences. *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677,
15 681 (9th Cir. 2009) (internal quotation marks and citation omitted). The "sheer possibility that a
16 defendant has acted unlawfully" is not sufficient, and "facts that are 'merely consistent with' a
17 defendant's liability" fall short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129
18 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

19 If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
20 concise as possible and under twenty-five pages in length. He need state only which of his
21 constitutional rights he feels were violated by each Defendant and what occurred to make him
22 think so.

23 **2. Linkage Requirement**

24 The Civil Rights Act under which this action was filed provides:

25 Every person who, under color of [state law] . . . subjects, or causes to
26 be subjected, any citizen of the United States . . . to the deprivation of
27 any rights, privileges, or immunities secured by the Constitution . . .
28 shall be liable to the party injured in an action at law, suit in equity, or
other proper proceeding for redress.

1 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link
2 between the actions of the defendants and the deprivation alleged to have been suffered by
3 Plaintiff. See *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423
4 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation
5 of a constitutional right, within the meaning of section 1983, if he does an affirmative act,
6 participates in another’s affirmative acts or omits to perform an act which he is legally required to
7 do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743
8 (9th Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each
9 named defendant with some affirmative act or omission that demonstrates a violation of
10 Plaintiff’s federal rights.

11 Plaintiff must clearly state which Defendant(s) he feels are responsible for each violation
12 of his constitutional rights and their factual basis as his complaint must put each Defendant on
13 notice of Plaintiff’s claims against him or her. See *Austin v. Terhune*, 367 F.3d 1167, 1171 (9th
14 Cir. 2004).

15 **3. Federal Rule of Civil Procedure 18(a)**

16 Fed.R.Civ.P. 18(a) states that “[a] party asserting a claim to relief as an original claim,
17 counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate
18 claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.”
19 “Thus multiple claims against a single party are fine, but Claim A against Defendant 1 should not
20 be joined with unrelated Claim B against Defendant 2. Unrelated claims against different
21 defendants belong in different suits, not only to prevent the sort of morass [a multiple claim,
22 multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing fees-
23 for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any
24 prisoner may file without prepayment of the required fees.” *George v. Smith*, 507 F.3d 605, 607
25 (7th Cir. 2007) citing 28 U.S.C. § 1915(g).

26 The fact that claims are premised on the same type of constitutional violation(s) (i.e.
27 retaliation) against multiple defendants does not make them factually related. Claims are related
28 where they are based on the same precipitating event, or a series of related events caused by the

1 same precipitating event. Plaintiff is advised that if he chooses to file a first amended complaint,
2 and fails to comply with Rule 18(a), all unrelated claims will be stricken.

3 **4. Legibility**

4 Plaintiff is incarcerated and is representing himself in this action. Under those
5 circumstances, the Court is lenient in overlooking technical and other errors. However, the
6 repeatedly copied complaint that Plaintiff submitted is virtually illegible. Plaintiff is required to
7 submit filings that are “clearly legible.” Local Rule 130(b). The failure to do so will result in an
8 order striking the first amended complaint from the record.

9 **D. Claims for Relief**

10 **1. Eighth Amendment – Exercise**

11 The Eighth Amendment protects prisoners from inhumane methods of punishment and
12 from inhumane conditions of confinement. *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir.
13 2006). Extreme deprivations are required to make out a conditions of confinement claim, and
14 only those deprivations denying the minimal civilized measure of life’s necessities are sufficiently
15 grave to form the basis of an Eighth Amendment violation. *Hudson v. McMillian*, 503 U.S. 1, 9
16 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth
17 Amendment, Plaintiff must allege facts sufficient to support a claim that prison officials knew of
18 and disregarded a substantial risk of serious harm to him. *E.g., Farmer v. Brennan*, 511 U.S. 825,
19 847 (1994); *Thomas v. Ponder*, 611 F.3d 1144, 1151-52 (9th Cir. 2010); *Richardson v. Runnels*,
20 594 F.3d 666, 672 (9th Cir. 2010). Inmates have a constitutional right to exercise and the denial
21 of out-of-cell exercise for an extended period of time is sufficiently serious to state a claim under
22 the Eighth Amendment. *Thomas*, 611 F.3d at 1151-52. However, “a prisoner’s right to outdoor
23 exercise is neither absolute nor infeasible in the light of prison violence.” *Norwood v. Vance*,
24 591 F.3d 1062, 1068-69 (9th Cir. 2010).

25 **2. Supervisory Liability**

26 Supervisory personnel are generally not liable under section 1983 for the actions of their
27 employees under a theory of *respondeat superior* and, therefore, when a named defendant holds a
28

1 supervisory position, the causal link between him and the claimed constitutional violation must be
2 specifically alleged. See *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*,
3 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief
4 under section 1983 based on a theory of supervisory liability, Plaintiff must allege some facts that
5 would support a claim that supervisory defendants either: personally participated in the alleged
6 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or
7 promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of
8 constitutional rights' and is 'the moving force of the constitutional violation.'" *Hansen v. Black*,
9 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045
10 (9th Cir. 1989). Under section 1983, liability may not be imposed on supervisory personnel for
11 the actions of their employees under a theory of *respondeat superior*. *Iqbal*, 556 U.S. at 677. "In
12 a § 1983 suit or a *Bivens* action - where masters do not answer for the torts of their servants - the
13 term 'supervisory liability' is a misnomer." *Id.* Knowledge and acquiescence of a subordinate's
14 misconduct is insufficient to establish liability; each government official is only liable for his or
15 her own misconduct. *Id.*

16 "[B]are assertions . . . amount[ing] to nothing more than a "formulaic recitation of the
17 elements" of a constitutional discrimination claim,' for the purposes of ruling on a motion to
18 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth." *Moss*,
19 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). "Such
20 allegations are not to be discounted because they are 'unrealistic or nonsensical,' but rather
21 because they do nothing more than state a legal conclusion – even if that conclusion is cast in the
22 form of a factual allegation." *Id.*

23 Thus, any allegations that supervisory personnel such as a Warden or the CDCR Director
24 violated Plaintiff's rights and are somehow liable because of the acts of those under his or her
25 supervision does not state a cognizable claim against.

26 **II. CONCLUSION**

27 For the reasons set forth above, Plaintiff's Complaint is dismissed, with leave to file a first
28 amended complaint within thirty days. If Plaintiff needs an extension of time to comply with this

1 order, Plaintiff shall file a motion seeking an extension of time no later than thirty days from the
2 date of service of this order.

3 Plaintiff must demonstrate in any first amended complaint how the conditions complained
4 of have resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625 F.2d
5 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named
6 defendant is involved. There can be no liability under section 1983 unless there is some
7 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
8 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
9 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

10 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
11 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
12 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
13 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
14 [sufficient] to raise a right to relief above the speculative level" *Twombly*, 550 U.S. 127, 555
15 (2007) (citations omitted).

16 Plaintiff is further advised that an amended complaint supercedes the original, *Lacey v.*
17 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
18 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
19 pleading," Local Rule 220.

20 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
21 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff
22 may not change the nature of this suit by adding new, unrelated claims in his first amended
23 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

24 Based on the foregoing, the Court **ORDERS**:

- 25 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 26 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 27 3. Within 30 days from the date of service of this order, Plaintiff must file a
28 first amended complaint curing the deficiencies identified by the Court in this

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order; and

4. If Plaintiff fails to comply with this order, this action will be dismissed for failure to obey a court order and for failure to state a claim.

IT IS SO ORDERED.

Dated: May 30, 2014

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE