

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

BERNARD ANDREW WHITE,

Plaintiff,

v.

E. MOLINA, et al.,

Defendants.

Case No. 1:13-cv-02048 DLB PC

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

THIRTY-DAY DEADLINE

Plaintiff Bernard Andrew White (“Plaintiff”) is a state prisoner proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983.

On October 8, 2013, Plaintiff filed a civil rights complaint in the Kings County Superior Court. Plaintiff names Correctional Sergeant E. Molina and Warden G. Gibson as Defendants. On December 13, 2013, Defendants filed a notice of removal from the Kings County Superior Court. Plaintiff is not proceeding in forma pauperis as Defendants have paid the filing fee.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. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

¹ The Court notes that Plaintiff is a three-striker under 28 U.S.C. § 1915(g). See White v. United States Eastern District, Case No. 1:12-cv-01623-LJO-SKO-PC. Nevertheless, Defendants have paid the filing fee.

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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

10 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
11 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
12 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
13 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or
14 omissions of each named defendant to a violation of his rights; there is no respondeat superior
15 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
16 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
17 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim
18 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
19 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.
20 at 678; Moss, 572 F.3d at 969.

21 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

22 Plaintiff is currently housed at Corcoran State Prison. It is unclear where the events giving
23 rise to this action took place.

24 The complaint is mostly vague and incomprehensible. Plaintiff appears to be complaining
25 about his housing assignment and/or custody status. From the little the Court can discern, it appears
26 that Plaintiff may have been placed in segregated SHU confinement on November 24, 2008. It also
27 appears that Plaintiff may have been housed with protective custody prisoners or prisoners who had
28 been housed on the Sensitive Needs Yard (“SNY”). As a result, Plaintiff appears to be complaining

1 that he became associated with other protective custody inmates and/or enemies, and this in turn
2 caused “bad disputes.”

3 Plaintiff seeks relief in the amount of \$100.00 or \$200.00 per day that he was in “false
4 imprisonment.” He further requests injunctive relief so as to be given single-cell status and housed
5 at either the reception center facility, another level IV facility, or federal prison.

6 **C. DISCUSSION**

7 1. Linkage

8 Under section 1983, Plaintiff must link the named defendants to the participation in the
9 violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-77, 129 S.Ct. 1937, 1948-49 (2009);
10 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of
11 Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
12 2002). Liability may not be imposed under a theory of *respondeat superior*, and there must exist
13 some causal connection between the conduct of each named defendant and the violation at issue.
14 Iqbal, 556 U.S. at 676-77; Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062, 1074-75
15 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v.
16 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

17 In this case, Plaintiff fails to link any of the named Defendants to any improper conduct. “A
18 supervisor may be liable only if (1) he or she is personally involved in the constitutional deprivation,
19 or (2) there is a sufficient causal connection between the supervisor’s wrongful conduct and the
20 constitutional violation.” Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013) (internal
21 quotation marks and citation omitted). Thus, Plaintiff fails to state a claim against any named
22 Defendant. Plaintiff will be provided with an opportunity to file an amended complaint.

23 2. Due Process – Classification

24 The Due Process Clause protects Plaintiff against the deprivation of liberty without the
25 procedural protections to which he is entitled under the law. Wilkinson v. Austin, 545 U.S. 209,
26 221, 125 S.Ct. 2384 (2005). To state a claim, Plaintiff must first identify the interest at stake.
27 Wilkinson, 545 U.S. at 221. Liberty interests may arise from the Due Process Clause or from state
28 law. Id. The Due Process Clause itself does not confer on inmates a liberty interest in avoiding

1 more adverse conditions of confinement, id. at 221-22 (citations and quotation marks omitted), and
2 under state law, the existence of a liberty interest created by prison regulations is determined by
3 focusing on the nature of the condition of confinement at issue, id. at 222-23 (citing Sandin v.
4 Conner, 515 U.S. 472, 481-84, 115 S.Ct. 2293 (1995)) (quotation marks omitted). Liberty interests
5 created by prison regulations are generally limited to freedom from restraint which imposes atypical
6 and significant hardship on the inmate in relation to the ordinary incidents of prison life. Wilkinson,
7 545 U.S. at 221(citing Sandin, 515 U.S. at 484) (quotation marks omitted); Myron v. Terhune, 476
8 F.3d 716, 718 (9th Cir. 2007).

9 Nevertheless, prisoners do not have a constitutional right to a particular classification status,
10 Moody v. Daggett, 429 U.S. 78, 88 n.9, 97 S.Ct. 274 (1976), or to be incarcerated at a particular
11 correctional facility, Meachum v. Fano, 427 U.S. 215, 224-25, 96 S.Ct. 2532 (1976). Plaintiff has
12 alleged no facts that implicate constitutional concerns regarding his classification status.

13 3. Due Process – Administrative Segregation

14 With respect to placement in administrative segregation, due process requires only that
15 prison officials hold an informal nonadversary hearing within a reasonable time after the prisoner is
16 segregated, inform the prisoner of the charges against him or the reasons for considering segregation,
17 and allow the prisoner to present his views. Toussaint v. McCarthy, 801 F.2d 1080, 1100-01 (9th
18 Cir. 1986) (quotation marks omitted), *abrogated in part on other grounds*, Sandin v. Conner, 515
19 U.S. 472, 115 S.Ct. 2293 (1995); accord Bruce v. Ylst, 351 F.3d 1283, 1287 (9th Cir. 2003).
20 Prisoners are not entitled to detailed written notice of charges, representation by counsel or counsel
21 substitute, an opportunity to present witnesses, or a written decision describing the reasons for
22 placing the prisoner in administrative segregation. Toussaint, 801 F.2d at 1100-01 (quotation marks
23 omitted). Further, due process does not require disclosure of the identity of any person providing
24 information leading to the placement of a prisoner in administrative segregation. Id. (quotation
25 marks omitted).

26 With respect to retention in administrative segregation, prison officials must engage in some
27 sort of periodic review of the confinement of such inmates. Id. (quotation marks omitted). Annual
28 reviews do not sufficiently protect the prisoner’s liberty interest. Id. Here, Plaintiff fails to allege

1 any violation of his constitutional rights due to placement in administrative segregation.

2 **D. CONCLUSION AND ORDER**

3 Plaintiff's complaint fails to state a claim upon which relief may be granted under section
4 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. Akhtar v.
5 Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

6 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
7 each named Defendant did that led to the deprivation of Plaintiff's federal rights and liability may
8 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, Iqbal, 556
9 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101
10 (2012). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to
11 relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).

12 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa
13 County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself without
14 reference to the prior or superceded pleading," Local Rule 220.

15 Accordingly, it is HEREBY ORDERED that:

- 16 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim
17 under section 1983;
- 18 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 19 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
20 amended complaint; and
- 21 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
22 action will be dismissed, with prejudice, for failure to state a claim.

23
24 IT IS SO ORDERED.

25 Dated: December 2, 2014

26 /s/ Dennis L. Beck
27 UNITED STATES MAGISTRATE JUDGE