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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ZANE HUBBARD,

Plaintiff,

v.

GIPSON, et al.,

Defendants.

Case No. 1:14-cv-00042-AWI-JLT (PC)

ORDER DISMISSING FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND

(Doc. 8)

I. Background

Plaintiff, Zane Hubbard, 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 January 13, 2014. (Doc. 1.) It was screened and dismissed with leave to amend. (Doc. 7.) On March 31, 2014, Plaintiff filed the First Amended Complaint which is before the Court for screening. (Doc. 8.)

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

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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).

B. Summary of Plaintiff's First Amended Complaint

Plaintiff complains of acts that occurred while he was an inmate at California State Prison ("CSP") in Corcoran, California. Plaintiff names Warden C. Gipson, CPT J. Castro, IGI LT. S. Pina, IGI LT (A) J. C. Garcia, CDW T. Perez, and "Superintendent" as the defendants in this action. While Plaintiff has provided some greater detail in the First Amended Complaint over the generalized concepts in his original Complaint, he fails to link any of the named defendants to his allegations and makes general references to "they," "the officials," and "authorities" who generally harassed him and forced him "on mental health designation because [he] told prison authorities 'I wanted the chip used to illegally survey me in my cell removed.' From then on, the Superintendent of Corcoran, Castro, Pina, Garcia, Perez and other authorities have threatened to "kill me," "sodomize me," "fuck my mom," said they "would set me up," . . . . (Doc. 8, 1st AC, p. 3.) Plaintiff then states various allegations that are not linked to any of the named defendants.

Plaintiff has not stated any cognizable claims, but may be able to amend to correct the deficiencies in his pleading to do so. Thus, he is being given what appear to be the applicable standards based on key words and/or phrases in his statement of claim and one last opportunity to file an amended complaint.

C. Pleading Requirements

1. Federal Rule of Civil Procedure 8(a)

"Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." Fed. R. Civ. Pro. 8(a). "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512. However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations." *Neitze v. Williams*, 490 U.S. 319, 330 n.9 (1989). "[A] liberal interpretation of a civil rights complaint may not supply essential

1 elements of the claim that were not initially pled." *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d
2 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).
3 "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall
4 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
5 claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

6 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a
7 cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556
8 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
9 Plaintiff must set forth "sufficient factual matter, accepted as true, to 'state a claim that is
10 plausible on its face.'" *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
11 allegations are accepted as true, but legal conclusions are not. *Iqbal.* at 678; *see also Moss v. U.S.*
12 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557. While
13 "plaintiffs [now] face a higher burden of pleadings facts . . ," *Al-Kidd v. Ashcroft*, 580 F.3d 949,
14 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally and are afforded
15 the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, courts are
16 not required to indulge unwarranted inferences. *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677,
17 681 (9th Cir. 2009) (internal quotation marks and citation omitted). The "sheer possibility that a
18 defendant has acted unlawfully" is not sufficient, and "facts that are 'merely consistent with' a
19 defendant's liability" fall short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129
20 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

21 If he chooses to file a second amended complaint, Plaintiff should endeavor to make it as
22 concise as possible. He should merely state which of his constitutional rights he feels were
23 violated by each Defendant and its factual basis.

24 **2. Linkage Requirement**

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

26 Every person who, under color of [state law] . . . subjects, or causes to
27 be subjected, any citizen of the United States . . . to the deprivation of
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.

42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of Plaintiff's federal rights. Further, Plaintiff cannot bring claims under section 1983 against other inmates as they are not persons acting under color of state law.

As previously stated, Plaintiff fails to link any of the name defendants to any factual allegations or even to any of the generalized concepts in his statement of claim. Plaintiff must clarify which Defendant(s) (by name, not by "they," "the officials," "authorities," and the like) he feels are responsible for each violation of his constitutional rights and their factual basis as his Complaint must put each Defendant on notice of Plaintiff's claims against him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th Cir. 2004).

3. Federal Rule of Civil Procedure 18(a)

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

The Court is unable to discern specific relationship between the generalized concepts listed in Plaintiff's Statement of Claim. Claims premised on the same type of constitutional violation(s) (i.e. retaliation) against multiple defendants are not necessarily factually related. Claims are related where they are based on the same precipitating event, or a series of related events caused by the same precipitating event. Plaintiff is advised that if he chooses to file a second amended complaint, and fails to comply with Rule 18(a), all unrelated claims will be stricken.

D. Claims for Relief

1. Eighth Amendment – Excessive Force

The Eighth Amendment prohibits those who operate our prisons from using "excessive physical force against inmates." *Farmer v. Brennan*, 511 U.S. 825 (1994); *Hoptowit v. Ray*, 682 F.2d 1237, 1246, 1250 (9th Cir.1982) (prison officials have "a duty to take reasonable steps to protect inmates from physical abuse"); *see also Vaughan v. Ricketts*, 859 F.2d 736, 741 (9th Cir.1988), cert. denied, 490 U.S. 1012 (1989) ("prison administrators' indifference to brutal behavior by guards toward inmates [is] sufficient to state an Eighth Amendment claim"). As courts have succinctly observed, "[p]ersons are sent to prison as punishment, not *for* punishment." *Gordon v. Faber*, 800 F.Supp. 797, 800 (N.D.Iowa 1992) (citation omitted), *aff'd,* 973 F.2d 686 (8th Cir. 1992). "Being violently assaulted in prison is simply not 'part of the penalty that criminal offenders pay for their offenses against society.'" *Farmer*, 511 U.S. at 834, 114 S.Ct. at 1977 (quoting *Rhodes*, 452 U.S. at 347).

Although the Eighth Amendment protects against cruel and unusual punishment, this does not mean that federal courts can or should interfere whenever prisoners are inconvenienced or suffer de minimis injuries. *Hudson v. McMillian*, 503 U.S. 1, 6-7 (1992) (8th Amendment excludes from constitutional recognition de minimis uses of force). The malicious and sadistic use of force to cause harm always violates contemporary standards of decency, regardless of whether significant injury is evident. *Id.* at 9; *see also Oliver v. Keller*, 289 F.3d 623, 628 (9th Cir. 2002) (Eighth Amendment excessive force standard examines *de minimis* uses of force, not *de minimis* injuries)). However, not "every malevolent touch by a prison guard gives rise to a

federal cause of action." *Id.* at 9. "The Eighth Amendment's prohibition of cruel and unusual punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort 'repugnant to the conscience of mankind.'" *Id.* at 9-10 (internal quotations marks and citations omitted).

2. Eighth Amendment – Serious Medical Needs

To maintain an Eighth Amendment claim based on medical care in prison, a plaintiff must first "show a serious medical need by demonstrating that failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain. Second, the plaintiff must show the defendants' response to the need was deliberately indifferent." *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012) (quoting *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (quotation marks omitted)).

The existence of a condition or injury that a reasonable doctor would find important and worthy of comment or treatment, the presence of a medical condition that significantly affects an individual's daily activities, and the existence of chronic or substantial pain are indications of a serious medical need. *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000) (citing *McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled on other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc)) (quotation marks omitted); *Doty v. County of Lassen*, 37 F.3d 540, 546 n.3 (9th Cir. 1994).

The second prong requires showing: (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference. *Wilhelm*, 680 F.3d at 1122 (quoting *Jett*, 439 F.3d at 1096). More generally, deliberate indifference "may appear when prison officials deny, delay or intentionally interfere with medical treatment, or it may be shown by the way in which prison physicians provide medical care." *Id.* (internal quotation marks omitted). Under *Jett*, "[a] prisoner need not show his harm was substantial." *Id.*; *see also McGuckin*, 974 F.2d at 1060 ("[A] finding that the defendant's activities resulted in 'substantial' harm to the prisoner is not necessary.").

Also, to the extent that Plaintiff feels that he is being involuntarily medicated, "the Due Process clause permits the State to treat a prison inmate who has a serious mental illness, with

antipsychotic drugs against his will, if the inmate is dangerous to himself or others and the treatment is in the inmate's medical interest" as long as the decision to medicate against his will is neither arbitrary, nor erroneous, and comports with procedural due process. *Washington v. Harper* 494 U.S. 210, 227-29 (1990).

3. *Heck v. Humphrey*

When a prisoner raises a constitutional challenge which could entitle him to an earlier release his sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990), *cert. denied* 498 U.S. 1126 (1991). Moreover, when seeking damages for an allegedly unconstitutional conviction or imprisonment, "a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. §2254." *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). "A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983." *Id.*, at 487.

Plaintiff makes various references to his "false conviction" and requests that he be released from custody. Plaintiff has not stated any facts to show that his conviction or sentences has been reversed, expunged, declared invalid, or called into question as required. Thus, his claims regarding his arrest, conviction, or imprisonment are not cognizable in this action. If Plaintiff continues to pursue his earlier release, this action will be barred by *Heck*.

4. California Code of Regulations

Plaintiff peppers his allegations with a variety of sections under Title 15 of the California Code of Regulations. The existence of regulations such as these governing the conduct of prison employees does not necessarily entitle Plaintiff to sue civilly to enforce the regulations or to sue for damages based on the violation of the regulations. The Court has found no authority to support a finding that there is an implied private right of action under Title 15 and Plaintiff has provided none. Given that the statutory language does not support an inference that there is a private right of action, the Court finds that Plaintiff is unable to state any cognizable claims upon

1 which relief may be granted based on the violation of Title 15 regulations.

2 **5. Supervisory Liability**

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

21 "'[B]are assertions . . . amount[ing] to nothing more than a "formulaic recitation of the
22 elements" of a constitutional discrimination claim,' for the purposes of ruling on a motion to
23 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth." *Moss*,
24 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). "Such
25 allegations are not to be discounted because they are 'unrealistic or nonsensical,' but rather
26 because they do nothing more than state a legal conclusion – even if that conclusion is cast in the
27 form of a factual allegation." *Id.*

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II. **CONCLUSION**

For the reasons set forth above, Plaintiff's First Amended Complaint is dismissed, with leave to file a second amended complaint within thirty days. If Plaintiff needs an extension of time to comply with this order, Plaintiff shall file a motion seeking an extension of time no later than thirty days from the date of service of this order.

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

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

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

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

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

1. Plaintiff's Complaint is dismissed, with leave to amend;

2. The Clerk's Office shall send Plaintiff a civil rights complaint form;

3. Within 30 days from the date of service of this order, Plaintiff must file a second amended complaint curing the deficiencies identified by the Court in this 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: **June 4, 2014**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE