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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

KAZI DANIEL JONES,

Case No. 1:14 cv 00124 GSA PC

Plaintiff,

vs.

MR. BROWN, et al.,

Defendants

ORDER DISMISSING COMPLAINT AND GRANTING PLAINTIFF LEAVE TO FILE AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE IN THIRTY DAYS

I. **Screening Requirement**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).¹

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 dismiss the case at any time if the court determines that . . . the action or

¹ Plaintiff filed a consent to proceed before a magistrate judge on February 14, 2014 (ECF No. 10).

appeal . . . fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

"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. P. 8(a). Pursuant to Rule 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. P. 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 elements of the claim that were not initially pled." Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

II. Plaintiff's Claims

Plaintiff brings this action against defendant correctional officials employed by the California Department of Corrections and Rehabilitation (CDCR) at Wasco State Prison, where the events at issue occurred. Plaintiff names the following individual defendants: Kitchen Supervisor Brown; Kitchen Staff Dunlap; Kitchen Staff Armendariz; C/O Cera; Nurse Practitioner Garza; Chief, Office of Appeals Lozano. Plaintiff's statement of claim, in its entirety, follows:

While in Reception I volunteered to work in Wasco State Prison's kitchen. The very first day of work about 5 hours in I slipped and fell, hitting my head on a tray cart. I was taken to San Joaquin (an outside hospital) where I received 5 staples in the back of my head. I also received a CT scan, an MRI, and a lumbar puncture to determine the cause of my migraine headaches, blurry vision, dizzy spells, nausea and black-outs. I have witnesses who saw the incident and who can testify regarding the working conditions, lack of work gear and other useful information.

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A. <u>Conditions of Confinement</u>

The Eighth Amendment protects prisoners from inhumane methods of punishment and from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006). Extreme deprivations are required to make out a conditions of confinement claim, and only those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth Amendment, Plaintiff must allege facts sufficient to support a claim that prison officials knew of and disregarded a substantial risk of serious harm to Plaintiff. Farmer v. Brennan, 511 U.S. 825, 847 (1994); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

Here, the Court finds Plaintiff's allegations to be vague. Plaintiff alleges that he has been injured, but does not specifically allege any facts indicating that each of the named defendants knew of a specific harm to Plaintiff and acted with disregard to that harm. Plaintiff has not charged any individual defendant with any specific conduct. Plaintiff may not hold defendants liable simply by alleging that he was injured in a slip and fall. Plaintiff must allege facts indicating that a dangerous condition existed, and facts that indicate each defendant knew of and disregarded that condition.

To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). "A person deprives another of a constitutional right, where that person 'does an affirmative act, participates in another's affirmative acts, or omits to perform an act which [that person] is legally required to do that causes the deprivation of which complaint is made." Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). "[T]he 'requisite causal connection can be established not only by some kind of direct, personal participation in the deprivation, but also by setting in motion a series of acts by others which the actor knows or reasonably should know would cause others to inflict the constitutional injury."

<u>Id.</u> (quoting <u>Johnson</u> at 743-44). Plaintiff has not specifically charged each defendant with conduct indicating that they knew of and disregarded a serious risk to Plaintiff's health, resulting in injury to Plaintiff. Plaintiff has failed to do so here. The complaint should therefore be dismissed. Plaintiff will, however, be granted leave to file an amended complaint.

Plaintiff need not, however, set forth legal arguments in support of his claims. In order to hold an individual defendant liable, Plaintiff must name the individual defendant, describe where that defendant is employed and in what capacity, and explain how that defendant acted under color of state law. Plaintiff should state clearly, in his or her own words, what happened. Plaintiff must describe what each defendant, *by name*, did to violate the particular right described by Plaintiff. Plaintiff has failed to do so here.

III. Conclusion and Order

The Court has screened Plaintiff's complaint and finds that it does not state any claims upon which relief may be granted under section 1983. The Court will provide Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not change the nature of this suit by adding new, unrelated claims in his amended complaint. George, 507 F.3d at 607 (no "buckshot" complaints).

Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights, <u>Hydrick</u>, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level" <u>Bell Atlantic Corp. v.</u> <u>Twombly</u>, 550 U.S. 544, 554 (2007) (citations omitted).

Finally, Plaintiff is advised that an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d

1	at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
2	Forsyth, 114 F.3d at 1474.
3	Accordingly, based on the foregoing, it is HEREBY ORDERED that:
4	1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a
5	claim;
6	2. The Clerk's Office shall send to Plaintiff a complaint form;
7	3. Within thirty (30) days from the date of service of this order, Plaintiff shall file
8	an amended complaint;
9	4. Plaintiff may not add any new, unrelated claims to this action via his amended
10	complaint and any attempt to do so will result in an order striking the amended
11	complaint; and
12	5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
13	action be dismissed, with prejudice, for failure to state a claim.
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15	IT IS SO ORDERED.
16	Dated: November 13, 2014
17	/s/ Gary S. Austin
18	UNITED STATES MAGISTRATE JUDGE
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