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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

PERRY WASHINGTON, et al,

Plaintiffs,

v.

FRESNO COUNTY SHERIFF, et al.,

Defendants.

Case No. 1:14-cv-00129-AWI-SAB

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO AMEND, FOR FAILURE TO  
STATE A CLAIM AND DENYING  
PLAINTIFFS' MOTIONS

(ECF Nos. 5, 6)

THIRTY-DAY DEADLINE

**I.**

**PROCEDURAL HISTORY**

On January 29, 2014, Plaintiffs Perry Washington and Anthonia Washington filed an unsigned complaint in this action. (ECF No. 1.) An order issued on February 3, 2014, striking the unsigned complaint and providing Plaintiffs with the legal standards that would apply to a civil rights complaint pursuant to 42 U.S.C. § 1983. (ECF No. 4.) On February 11, 2014, Anthonia Washington, proceeding pro se and in forma pauperis filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and two motions seeking injunctive relief, discovery, and to proceed in this action without the signature of Plaintiff Perry Washington. (ECF Nos. 5, 6.)

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1 **II.**

2 **SCREENING REQUIREMENT**

3 Pursuant to 28 U.S.C. § 1915(e)(2), the Court must dismiss a case if at any time the Court  
4 determines that the complaint fails to state a claim upon which relief may be granted. In  
5 determining whether a complaint fails to state a claim, the Court uses the same pleading standard  
6 used under Federal Rule of Civil Procedure 8(a). A complaint must contain “a short and plain  
7 statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2).  
8 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause  
9 of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.  
10 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim  
12 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at  
13 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s liability .  
14 . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Iqbal,  
15 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as  
16 true all factual allegations contained in a complaint, a court need not accept a plaintiff’s legal  
17 conclusions as true. Iqbal, 556 U.S. at 678. “Threadbare recitals of the elements of a cause of  
18 action, supported by mere conclusory statements, do not suffice.” Id. (quoting Twombly, 550  
19 U.S. at 555).

20 **III.**

21 **COMPLAINT ALLEGATIONS**

22 Anthonia Washington alleges that, between 1989 and 2014, she and Perry Washington  
23 have routinely been denied the right to use civil process to address problems, such as property  
24 damage, slander, verbal abuse, racial slurs, physical assaults, and vandalism. (Compl. 1-2, ECF  
25 No. 6.) Plaintiff contends that there have been several attempts at arson and eventually their  
26 house was burned down. Plaintiff states that reports were made on-line, but physical evidence  
27 was not processed and the perpetrators of the crimes were not investigated. Plaintiff contends  
28 that the failure to investigate and prosecute individuals is the result of race and disability

1 discrimination. (Id. at 2.)

2 Plaintiff contends that hate groups have been terrorizing her family for years and they  
3 have been denied the right to report the crimes, have the perpetrators investigated or punished  
4 and they have suffered harm to their property and their finances. (Id. at 2-3.) Plaintiff alleges  
5 that this discrimination involves many different departments and many different situations, but  
6 the discriminatory pattern is consistent. (Id. at 3-4.)

7 Plaintiff states that they have been told by staff members that Fresno County can force  
8 them to leave Fresno County. When they attempted to seek relief in Superior Court, they were  
9 threatened and one of them was arrested, jailed, beaten, and told to drop the lawsuit. (Id. at 4.)

10 For the reasons set forth below, Plaintiff's complaint fails to state a cognizable claim for  
11 relief for a violation of their federal rights. Plaintiffs shall be granted one final opportunity to  
12 file an amended complaint to correct the deficiencies identified in this order.

13 **IV.**  
14 **DISCUSSION**

15 **A. Linkage**

16 As Plaintiffs were previously informed, under section 1983, they are required to show  
17 that (1) each defendant acted under color of state law and (2) each defendant deprived them of  
18 rights secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d  
19 1178, 1185 (9th Cir. 2006). To state a claim, each Plaintiff must demonstrate that each  
20 defendant personally participated in the deprivation of his rights. Jones v. Williams, 297 F.3d  
21 930, 934 (9th Cir. 2002). There is no respondeat superior liability under section 1983, and  
22 therefore, each defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 677.

23 In this instance, Plaintiff has not linked any defendant to any acts or omissions that  
24 purportedly led to the violation of their constitutional rights. While Plaintiff alleges that they  
25 have been discriminated against based upon race and disability, these general assertions do not  
26 suffice to show that Plaintiffs' constitutional rights were violated by any state actor. Iqbal, 556  
27 U.S. at 678-79.

28 Plaintiffs do not need to make their complaint lengthy, Fed. R. Civ. P. 8(a)(2), but it must

1 specify what each defendant did or did not do that led to the violation of the plaintiff's rights.  
2 Conclusory assertions of personal involvement or liability will not suffice. Iqbal at 678-79. In  
3 other words, to state a cognizable claim, Plaintiffs must set forth the specific defendants that they  
4 are alleging violated their rights and state sufficient factual allegations to show what the  
5 defendant did or did not do to violate Plaintiffs' rights.

#### 6 **B. Joinder**

7 Further, as Plaintiffs were also previously advised, Plaintiffs may not bring unrelated  
8 claims against unrelated parties in a single action. Fed. R. Civ. P. 18(a), 20(a)(2); Owens v.  
9 Hinsley, 635 F.3d 950, 952 (7th Cir. 2011); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).  
10 Plaintiffs may bring a claim against multiple defendants so long as (1) the claim arises out of the  
11 same transaction or occurrence, or series of transactions and occurrences, and (2) there are  
12 commons questions of law or fact. Fed. R. Civ. P. 20(a)(2); Coughlin v. Rogers, 130 F.3d 1348,  
13 1351 (9th Cir. 1997); Desert Empire Bank v. Insurance Co. of North America, 623 F.3d 1371,  
14 1375 (9th Cir. 1980). Only if the defendants are properly joined under Rule 20(a) will the Court  
15 review the other claims to determine if they may be joined under Rule 18(a), which permits the  
16 joinder of multiple claims against the same party.

#### 17 **C. Equal Protection**

18 Plaintiff contends that they have been discriminated against based upon their race and  
19 disability. The Equal Protection Clause requires that all persons who are similarly situated  
20 should be treated alike. Lee v. City of Los Angeles, 250 F.3d 668, 686 (2001); City of Cleburne  
21 v. Cleburne Living Center, 473 U.S. 432, 439 (1985). An equal protection claim may be  
22 established by showing that the defendant intentionally discriminated against the plaintiff based  
23 on the plaintiff's membership in a protected class, Lee, 250 F.3d at 686; Barren v. Harrington,  
24 152 F.3d 1193, 1194 (1998), or that similarly situated individuals were intentionally treated  
25 differently without a rational relationship to a legitimate state purpose, Thornton v. City of St.  
26 Helens, 425 F.3d 1158, 1167 (2005); Village of Willowbrook v. Olech, 528 U.S. 562, 564  
27 (2000). To succeed on an equal protection claim, the plaintiff must show that the defendant  
28 acted in a discriminatory manner and the discrimination was intentional. Reese v. Jefferson

1 School Dist. No. 14J, 208 F.3d 736, 740 (9th Cir. 2000).

2 While the complaint alleges that Plaintiffs have been discriminated against based upon  
3 race and disability, it does not contain any information regarding Plaintiffs' race or any alleged  
4 disabilities. To state a claim for a violation of the equal protection clause based upon race,  
5 Plaintiffs must allege sufficient facts to show that they are a member of a protected class and that  
6 the defendants have intentionally discriminated against them based upon their membership in  
7 that protected class. Lee, 250 F.3d at 686. Alternately, Plaintiffs can state a claim by showing  
8 that similarly situated individuals were treated differently than they were. Thornton, 425 F.3d at  
9 1167. Under either theory, Plaintiffs must show intentional discrimination. Reese, 208 F.3d at  
10 740. Conclusory allegations will not suffice, and Plaintiffs' complaint must contain sufficient  
11 factual allegations to state a plausible claim that any alleged action or inaction by each defendant  
12 was due to intentional discrimination. Iqbal, 556 U.S. at 678.

13 V.

14 **MOTIONS FOR PRETRIAL RELIEF**

15 Plaintiff Anthonia Washington is seeking orders to compel the Fresno County Sheriff to  
16 1) produce Perry Washington in Federal Court to sign a copy of the in forma pauperis  
17 application; 2) to produce a copy of all video, voice, and any other type of information related to  
18 Perry Washington; and 3) for the Court to accept all filings without Perry Washington's  
19 signature until he is produced in Federal Court.

20 **A. Motion for Order to Produce Perry Washington**

21 "A preliminary injunction is an extraordinary remedy never awarded as of right." Winter  
22 v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 376 (2008) (citation omitted). "A  
23 court may grant a preliminary injunction only if the plaintiff establishes four elements: (1)  
24 likelihood of success on the merits; (2) likelihood of suffering irreparable harm absent a  
25 preliminary injunction; (3) the balance of equities tips in plaintiff's favor; and (4) injunctive  
26 relief is in the public interest." Leigh v. Salazar, 677 F.3d 892, 896 (2012); Alliance for Wild  
27 Rockies v. Cottrell, 622 F.3d 1045, 1049 (9th Cir. 2010). An injunction may only be awarded  
28 upon a clear showing that the plaintiff is entitled to relief. Winter, 129 S. Ct. at 376 (citation

1 omitted).

2           Additionally, for each form of relief sought in federal court, Plaintiff must establish  
3 standing. Mayfield v. United States, 599 F.3d 964, 969 (9th Cir. 2010), cert.denied, 131 S. Ct.  
4 503 (2010). This requires Plaintiff to “show that he is under threat of suffering ‘injury in fact’  
5 that is concrete and particularized; the threat must be actual and imminent, not conjectural or  
6 hypothetical; it must be fairly traceable to challenged conduct of the defendant; and it must be  
7 likely that a favorable judicial decision will prevent or redress the injury.” Summers v. Earth  
8 Island Institute, 129 S. Ct. 1142, 1149 (2009) (citation omitted); Mayfield, 599 F.3d at 969  
9 (citation omitted).

10           Finally, as Perry Washington is currently in custody, any award of equitable relief is  
11 governed by the Prison Litigation Reform Act, which provides in relevant part, “[p]rospective  
12 relief in any civil action with respect to prison conditions shall extend no further than necessary  
13 to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall  
14 not grant or approve any prospective relief unless the court finds that such relief is narrowly  
15 drawn, extends no further than necessary to correct the violation of the Federal right, and is the  
16 least intrusive means necessary to correct the violation of the Federal right.” 18 U.S.C. §  
17 3626(a)(1)(A).

18           The Court is dismissing Plaintiffs’ complaint, with leave to amend. Until Plaintiffs file  
19 an amended complaint and the Court is able to determine which claims are cognizable and  
20 appropriately raised in this action, the Court lacks jurisdiction to issue any injunctive relief. 18  
21 U.S.C. § 3626(a)(1)(A); Mayfield, 599 F.3d at 969. Plaintiff’s request to have Perry Washington  
22 produced in Federal Court is denied for lack of jurisdiction.

23           **B.       Motion for Discovery**

24           Once the Court screens Plaintiffs’ complaint and finds that it states a cognizable claim, an  
25 order will issue setting a mandatory scheduling conference. After the mandatory scheduling  
26 conference, an order will issue setting dates to conduct discovery in this action. No discovery  
27 may be conducted, without permission from the Court, until an answer is filed and the Court  
28 issues an order opening discovery. Plaintiffs’ motion to compel production of discovery in this

1 action is denied as premature.

2 **C. Motion to Proceed without Plaintiff Perry Washington’s Signature**

3 Standing raises both constitutional and prudential concerns incident to the federal court’s  
4 exercise of jurisdiction. Coalition of Clergy, Lawyers, and Professionals v. Bush, 310 F.3d  
5 1153, 1157 (9th Cir. 2002). A prudential principle of standing is that normally a plaintiff must  
6 assert his own legal rights rather than those of third parties. Oregon v. Legal Services Corp., 552  
7 F.3d 965, 971 (9th Cir. 2009); Fleck and Associates, Inc. v. Phoenix, 471 F.3d 1100, 1104 (9th  
8 Cir. 2006.) In some circumstances a litigant may seek relief for third persons, however, the  
9 litigant must demonstrate 1) the litigant suffered an injury in fact; 2) that there is a close  
10 relationship between the litigant and the individual who possesses the right that the litigant is  
11 asserting; and 3) there is a hindrance to the individual’s ability to assert his own rights. Coalition  
12 of Clergy, Lawyers, and Professionals, 310 F.3d at 1163; Fleck and Associates, Inc., 471 F.3d at  
13 1105 n.3; McCollum v. California Dep’t of Corrections and Rehabilitation, 647 F.3d 870, 878  
14 (9th Cir. 2011).

15 Further, Local Rule 131 of the Eastern District of California requires that all pleadings  
16 “be signed by the . . . party involved if that party is appearing in propria persona.” In this  
17 instance, if Perry Washington wishes to pursue claims for violations of his federal rights, he must  
18 also sign the complaint. Anthonia Washington has not set forth facts to show Perry Washington  
19 is unable to assert his own legal rights. As this Court is well aware, the fact that an individual is  
20 incarcerated does not preclude him from filing complaints to vindicate his rights. Plaintiff’s  
21 request to proceed without Plaintiff Perry Washington’s signature is denied.

22 **VI.**

23 **CONCLUSION AND ORDER**

24 For the reasons stated, Plaintiff’s complaint does not state a cognizable claim for relief  
25 for a violation of their constitutional rights. Plaintiffs are granted one final leave to file an  
26 amended complaint within thirty days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).  
27 Plaintiffs may not change the nature of this suit by adding new, unrelated claims in the amended  
28 complaint. George, 507 F.3d at 607 (7th Cir. 2007).

1 Plaintiffs' amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what  
2 each named defendant did that led to the deprivation of Plaintiffs' constitutional or other federal  
3 rights, Iqbal, 556 U.S. at 678. "The inquiry into causation must be individualized and focus on  
4 the duties and responsibilities of each individual defendant whose acts or omissions are alleged  
5 to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988).  
6 Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief  
7 above the speculative level . . . ." Twombly, 550 U.S. at 555 (citations omitted).

8 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana,  
9 Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987),  
10 and must be "complete in itself without reference to the prior or superseded pleading," Local  
11 Rule 220.

12 Based on the foregoing, it is HEREBY ORDERED that:

- 13 1. Plaintiffs' complaint, filed February 11, 2014, is DISMISSED for failure to state a  
14 claim upon which relief may be granted under section 1983;
- 15 2. Plaintiff's motion to produce Perry Washington is DENIED due to lack of  
16 jurisdiction;
- 17 3. Plaintiff's motion to compel discovery is DENIED as premature;
- 18 4. Plaintiff's motion to proceed without Perry Washington's signature is DENIED;
- 19 5. Within **thirty (30) days** from the date of service of this order, Plaintiffs shall file  
20 an amended complaint; and
- 21 6. If Plaintiffs fail 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 IT IS SO ORDERED.

24 Dated: February 18, 2014

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26 \_\_\_\_\_  
27 UNITED STATES MAGISTRATE JUDGE  
28