

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
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7 VICTOR DELACRUZ,

8 Plaintiff,

9 vs.

10 C. GIPSON, et al.,

11 Defendants

Case No. 1:14 cv 00418 GSA PC

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

AMENDED COMPLAINT DUE
IN THIRTY DAYS

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14 **I. Screening Requirement**

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

18 The Court is required to screen complaints brought by prisoners seeking relief against a
19 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
20 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
21 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
22 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
23 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
24 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
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28 ¹ Plaintiff filed a consent to proceed before a magistrate judge on April 14, 2014 (ECF No. 5).

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

3 **II. Plaintiff’s Claims**

4 Plaintiff, an inmate in the custody of the California Department of Corrections and
5 Rehabilitation (CDCR) at CSP Corcoran, brings this civil rights action against defendant CDCR
6 officials employed by the CDCR at Corcoran. Plaintiff names as defendants the following
7 individuals: Warden C. Gipson; Associate Warden Lambert; Captain S. Johnson; Capt. R.
8 Broomfield; Lieutenant C. Moreno; Sergeant. C. Munoz; Sgt. J. Callow; Correctional Officer
9 (C/O) D. B. Hernandez; C/O K. Carter; C/O L. Borges; C/O H. German; C/O R. Botello; C/O S.
10 Cordova; C/O P. Holguin; C/O P. Sanchez; C/O J. Renteria; C/O R. Zamora; C/O W. Hayward;
11 C/O K. Lockhart; Supervisor of Building and Trades J. Carrol; Plumber C. Mauldin; Plumber
12 John Doe. Plaintiff claims that he was subjected to conditions of confinement such that they
13 violated the Eighth Amendment prohibition on cruel and unusual punishment.

14 Plaintiff alleges that between September of 2011 and February of 2013, he and other
15 inmates were in cells that “Leaked and flooded with contaminated water (i.e. ‘from the tiers’).
16 New mattresses, pillows, blankets, sheets, towels t-shirts, boxer shorts, socks and/or shoes were
17 contaminated.” Plaintiff alleges that Defendants “refused to take reasonable steps to abate the
18 problem.” Plaintiff alleges that the leaks became worse when it rained.

19 **A. Conditions of Confinement**

20 The Eighth Amendment protects prisoners from inhumane methods of punishment and
21 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
22 2006). Extreme deprivations are required to make out a conditions of confinement claim, and
23 only those deprivations denying the minimal civilized measure of life’s necessities are
24 sufficiently grave to form the basis of an Eighth Amendment violation. Hudson v. McMillian,
25 503 U.S. 1, 9 (1992) (citations and quotations omitted). In order to state a claim for violation of
26 the Eighth Amendment, Plaintiff must allege facts sufficient to support a claim that prison
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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).

The routine discomfort in the prison setting is inadequate to satisfy the objective prong of an Eighth Amendment inquiry. “Those deprivations denying ‘the minimal civilized measure of life’s necessities are grave to form the basis of an Eighth Amendment violation.’” Id. (quoting Rhodes v. Chapman, 452 U.S. 337, 347 (1981)). Prison officials have a duty to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical care, and personal safety. See Farmer v. Brennan, 511 U.S. 825, 832 (1994). “The circumstances, nature, and duration of a deprivation of one of these necessities must be considered in determining whether a constitutional violation has occurred. The more basic the need, the shorter the time it can be withheld.” Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000).

Here, the Court finds Plaintiff’s allegations to be vague. Plaintiff sets forth a generalized allegation regarding the conditions of his confinement, and names 28 individual defendants. 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.’” Id. (quoting Johnson 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 may not hold defendants liable simply by alleging that prisoners were subjected to leaky

1 and filthy cells, along with the vague allegations that Defendants neglected their condition.
2 Plaintiff must allege facts indicating that each defendant was aware of a specific harm to Plaintiff,
3 and acted with deliberate indifference to that harm. The allegation that all of the defendants
4 were deliberately indifferent is a conclusory allegation. Plaintiff must allege facts that indicate
5 that each of the individual defendants knew of a particular harm to Plaintiff and acted with
6 deliberate indifference to that harm. Plaintiff has failed to do so here. The complaint should
7 therefore be dismissed. Plaintiff will, however, be granted leave to file an amended complaint.

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

14 **III. Conclusion and Order**

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

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

26 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
27 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 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

Accordingly, based on the foregoing, it is HEREBY ORDERED that:

1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a claim;
2. The Clerk’s Office shall send to Plaintiff a complaint form;
3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an amended complaint;
4. Plaintiff may not add any new, unrelated claims to this action via his amended complaint and any attempt to do so will result in an order striking the amended complaint; and
5. If Plaintiff fails to file an amended complaint, the Court will recommend that this action be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: **January 26, 2015**

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE