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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

KENNY FERNANDEZ,  
  
                    Plaintiff,  
  
          v.  
  
J. LOPEZ, et al.,  
  
                    Defendants.

Case No. 1:14-cv-00596 LJO DLB PC  
  
ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND  
  
THIRTY-DAY DEADLINE

Plaintiff Kenny Fernandez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 24, 2014. He names Correctional Officers J. Lopez, R. Garcia, Sergeant S. Perez Jr., Lieutenant Ford, and Captain Kibler as Defendants.

**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 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 Correctional Training Facility in Soledad, California. He was  
23 incarcerated at Wasco State Prison when the events giving rise to this action took place.

24 Plaintiff alleges the following. On June 23, 2013, Plaintiff was housed on the upper tier of  
25 Facility B, Building 4, B-Side, along with other General Population (“GP”) inmates. The bottom tier  
26 housed Sensitive Needs (“SNY”) inmates. While Plaintiff and other GP inmates were eating  
27 breakfast in the dayroom, Defendant Lopez opened the cell doors of the SNY inmates. Defendant  
28 Garcia was working in the same building. Defendant Lopez had told Defendant Garcia that he had

1 enough bullets for everyone. When the cell doors opened, Plaintiff was attacked by SNY inmates.  
2 He suffered a punctured eardrum. Defendant Perez was called in after the incident happened.  
3 Plaintiff alleges that Lieutenant Ford and Captain Kibler had planned it out that this incident would  
4 happen.

5 Plaintiff complains of staff negligence and misconduct. As a result of the personal injuries,  
6 emotional distress and future medical attention he suffered, he asks for money damages in the  
7 amount of three million dollars.

8 **C. DISCUSSION**

9 1. Eighth Amendment Failure to Protect

10 Under section 1983, Plaintiff must link the named defendants to the participation in the  
11 violation at issue. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d 1011,  
12 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297  
13 F.3d at 934. Liability may not be imposed on supervisory personnel under the theory of *respondeat*  
14 *superior*, Iqbal, 556 U.S. at 676-77; Simmons, 609 F.3d at 1020-21; Ewing, 588 F.3d at 1235; Jones,  
15 297 F.3d at 934, and administrators or supervisors, such as Defendants Perez, Ford, and Kibler, may  
16 only be held liable if they “participated in or directed the violations, or knew of the violations and  
17 failed to act to prevent them,” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v.  
18 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012); Corales v.  
19 Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School Board of  
20 Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir.  
21 1997). Some culpable action or inaction must be attributable to each defendant for liability to lie.  
22 Starr, 652 F.3d at 1205; Jeffers v. Gomez, 267 F.3d 895, 914-15 (9th Cir. 2001); Redman v. County  
23 of San Diego, 942 F.2d 1435, 1446-47 (9th Cir. 1991); Hansen v. Black, 885 F.2d 642, 646 (9th Cir.  
24 1989).

25 The Eighth Amendment’s prohibition against cruel and unusual punishment protects  
26 prisoners not only from inhumane methods of punishment but also from inhumane conditions of  
27 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.  
28 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347, 101

1 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and often  
2 are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of pain.  
3 Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).

4 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,  
5 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir.  
6 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains while in  
7 prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks omitted). To  
8 maintain an Eighth Amendment claim, inmates must show deliberate indifference to a substantial  
9 risk of harm to their health or safety. E.g., Farmer, 511 U.S. at 847; Thomas v. Ponder, 611 F.3d  
10 1144, 1151-52 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan,  
11 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

12 Plaintiff's vague allegations do not support a claim against any Defendant for violation of the  
13 Eighth Amendment. With respect to Defendants Garcia and Lopez, Plaintiff states only that they  
14 released SNY prisoners from their cells while GP prisoners were eating breakfast, and an attack  
15 ensued. Plaintiff alleges no facts demonstrating (1) the existence of a substantial risk of harm either  
16 to Plaintiff's safety or to the safety of all inmates on the yard (2) which was knowingly disregarded  
17 by Defendants Garcia and Lopez. Farmer, 511 U.S. at 835.

18 As to Defendant Perez, Plaintiff states only that Perez appeared on the scene after the attack  
19 had already occurred. Thus, Plaintiff fails to show how Defendant Perez failed to protect him from a  
20 substantial risk of harm.

21 As to Defendants Ford and Kibler, Plaintiff merely concludes that they planned the incident.  
22 This vague allegation is insufficient to establish that Defendants "participated in or directed the  
23 violations, or knew of the violations and failed to act to prevent them." Taylor, 880 F.2d at 1045. As  
24 discussed above, Plaintiff sets forth no facts establishing a violation of the Eighth Amendment.

25 **D. CONCLUSION AND ORDER**

26 Plaintiff's complaint fails to state a claim upon which relief may be granted under section  
27 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. Akhtar v.  
28 Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
2 each named Defendant did that led to the deprivation of Plaintiff's federal rights and liability may  
3 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, Iqbal, 556  
4 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101  
5 (2012). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to  
6 relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).

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

10 **ORDER**

11 Accordingly, it is HEREBY ORDERED that:

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

19  
20 IT IS SO ORDERED.

21 Dated: March 11, 2015

22 /s/ Dennis L. Beck  
23 UNITED STATES MAGISTRATE JUDGE