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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EDWARD B. SPENCER,  
Plaintiff,  
vs.  
N. FAIRFIELD, et al.,  
Defendants

Case No. 1:14 cv 00754 LJO GSA PC

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. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

“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

1 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268  
2 (9th Cir. 1982)).

3 **II. Plaintiff's Claims**

4 Plaintiff, an inmate in the custody of the California Department of Corrections and  
5 Rehabilitation (CDCR) at the California Substance Abuse Treatment Facility at Corcoran  
6 (SATF), brings this civil rights action against defendant CDCR officials employed by the CDCR  
7 at SATF. Plaintiff names as defendants Correctional Officers Fairfield, Lopez and Aguirre.  
8 Plaintiff claims that he was subjected to retaliation in violation of the First Amendment.

9 Plaintiff alleges that on March 20, 2013, Defendants Lopez and Fairfield transferred him  
10 to a different cell. Fairfield told Plaintiff that he needed his cell for a "DPP predator."<sup>1</sup> Plaintiff  
11 had a chrono for a lower tier and lower bunk housing. Plaintiff alleges that other cells had  
12 inmates with only one occupant and who did not possess a chrono for a lower tier or lower bunk.  
13 On April 18, 2013, Plaintiff filed a grievance against Defendants Lopez and Fairfield. The  
14 grievance was granted at the first level, partially granted at the second level and denied at the  
15 third level. Plaintiff does not specify specifically what the grievance issue was, or what  
16 specifically was granted.<sup>2</sup>

17 On January 3, 2014, Plaintiff received a CDC 128A (custodial counseling chrono) from  
18 Defendant Aguirre. Plaintiff alleges that this was an adverse action against Plaintiff for filing a  
19 grievance against Aguirre. Plaintiff filed a grievance against Aguirre on January 7, 2014, for  
20 filing a false chrono. Plaintiff's grievance was partially granted. Plaintiff's own exhibit B,  
21 however, belies Plaintiff's allegation that the counseling chrono was filed in retaliation for filing  
22 an inmate grievance. Plaintiff's exhibit B indicates that the counseling chrono simply stated that  
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26 <sup>1</sup> The Court presumes Plaintiff is referring to a Disability Placement Plan inmate. In the amended  
27 complaint, Plaintiff should indicate if he has a different definition of a DPP inmate.

28 <sup>2</sup> Plaintiff refers the Court to documents attached to his complaint. The Court will not review  
Plaintiff's exhibits in order to make the complaint complete. Plaintiff must specifically allege all facts in support of  
his claim in the body of the complaint.

1 Plaintiff told staff that he had a “shower anytime” chrono when, in fact, Plaintiff had a “shower  
2 per custody” chrono.

3 Plaintiff alleges that Defendants Lopez and Fairfield transferred Plaintiff from their  
4 building “from a desire to punish and retaliate against him for exercising his constitutional right  
5 in filing grievance in relationship to his incarceration.” Plaintiff alleges that Lopez falsely told  
6 the Appeals Coordinator that the bed move was made to accommodate another inmate who  
7 required lower tier and lower bunk housing and that there were no other available cells.  
8 Plaintiff asserts the conclusory allegation that because Lopez and Fairfield failed to transfer  
9 inmates who were in a cell by themselves and who did not possess a lower bunk or lower tier  
10 chrono, they were in fact punishing Plaintiff for filing grievances.

11 **A. Retaliation**

12 Allegations of retaliation against a prisoner’s First Amendment rights to speech or to  
13 petition the government may support a 1983 claim. Rizzo v. Dawson, 778 F.2d 5527, 532 (9<sup>th</sup>  
14 Cir. 1985); see also Valandingham v. Bojorquez, 866 F.2d 1135 (9<sup>th</sup> Cir. 1989); Pratt v. Rowland,  
15 65 F.3d 802, 807 (9<sup>th</sup> Cir. 1995). “Within the prison context, a viable claim of First Amendment  
16 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action  
17 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4)  
18 chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably  
19 advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9<sup>th</sup> Cir.  
20 2005); accord Watison v. Carter, 668 F.3d 1108, 1114-15 (9<sup>th</sup> Cir. 2012); Brodheim v. Cry, 584  
21 F.3d 1262, 1269 (9<sup>th</sup> Cir. 2009).

22 Plaintiff concludes that because his cell move was ordered after he filed a grievance, the  
23 cell move was taken in retaliation for filing an inmate grievance. Plaintiff alleges no facts that  
24 support such a conclusory allegation. Plaintiff has no protected interest in being housed in a  
25 particular cell. Should Plaintiff feel that Defendants have somehow put him in danger or harmed  
26 him by ignoring his lower tier/lower bunk chrono, he should assert his claim under the Eighth  
27 Amendment. Further, Plaintiff has not alleged any facts indicating that any action on the part of

1 Defendants chilled his First Amendment activity. That Defendants made a decision that, in  
2 Plaintiff's view, makes no sense does not subject them to liability for retaliation. This claim  
3 must therefore be dismissed. Plaintiff will, however, be granted leave to file an amended  
4 complaint.

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

11 **III. Conclusion and Order**

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

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

23 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
24 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,  
25 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded  
26 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an  
27 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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16 IT IS SO ORDERED.

17 Dated: January 15, 2015

18 /s/ Gary S. Austin

19 UNITED STATES MAGISTRATE JUDGE  
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