

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DALE OWEN DUSTIN,  
Plaintiff,  
v.  
GIPSON, et al.,  
Defendants.

Case No. 1:14-cv-00757 AWI DLB  
ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND  
THIRTY-DAY DEADLINE

Plaintiff Dale Owen Dustin (“Plaintiff”) is a California state prison inmate proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action in the Northern District of California. The action was transferred to this Court on May 16, 2014. Plaintiff appears to name over 75 Defendants.

**A. SCREENING STANDARD**

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

1 A complaint must contain “a short and plain statement of the claim showing that the  
2 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
4 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing  
5 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
6 matter, accepted as true, to ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550  
7 U.S. at 555). While factual allegations are accepted as true, legal conclusions are not. Id.

8 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
9 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
10 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);  
11 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions  
12 or omissions of each named defendant to a violation of his rights; there is no respondeat superior  
13 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609  
14 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir.  
15 2009); Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a  
16 plausible claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,  
17 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting this plausibility  
18 standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

19 **B. DISCUSSION**

20 Plaintiff is incarcerated and he is representing himself in this action. Under those  
21 circumstances, the Court is lenient in overlooking technical and other errors. However, Plaintiff’s  
22 complaint is approximately 38 pages of illegible handwriting. Plaintiff’s failure to leave spaces  
23 between his words and to double-space his sentences, as well as his very small writing, renders his  
24 complaint virtually illegible. Plaintiff is required to submit filings which are “clearly legible.”  
25 Local Rule 130(b). In submitting an amended complaint in compliance with this order, Plaintiff is  
26 required to leave spaces between his words and to double-space his sentences. Local Rule 130(c).  
27 The failure to do so will result in an order striking the amended complaint from the record.  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

As Plaintiff's complaint is not legible, the Court cannot determine the nature of his complaints.

**C. CONCLUSION AND ORDER**

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

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

Accordingly, it is HEREBY ORDERED that:

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

IT IS SO ORDERED.

Dated: June 8, 2014

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE