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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO,
Plaintiff,
vs.
C/O RUIZ, et al.,
Defendants

Case No. 1:14 cv 00975 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. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c).¹

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

¹ Plaintiff filed a consent to proceed before a magistrate judge on August 22, 2014 (ECF No. 9).

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

3 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
4 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534
5 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
6 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
7 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
8 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
9 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
10 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
11 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
12 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
13 (9th Cir. 1982)).

14 **II. Plaintiff’s Claims**

15 Plaintiff, an inmate in the custody of the California Department of Corrections and
16 Rehabilitation at Kern Valley State Prison, brings this civil rights action against defendant
17 correctional officials at Corcoran State Prison, where the events at issue occurred. Plaintiff
18 names as defendants Correctional Officer (C/O) Ruiz and C/O Boyd.

19 Plaintiff alleges that on November 1, 2013, he was sent to Administrative Segregation as
20 a result of a physical assault (Plaintiff was the victim). C/O Boyd was assigned to perform an
21 inventory of Plaintiff’s personal property. Plaintiff alleges that he did not receive a receipt for
22 his personal property until he had been in AdSeg for two days. Plaintiff did not know what items
23 were missing from his property until after he had been to committee and his personal property
24 was returned to him. Plaintiff told C/O Ruiz that some of the property in Plaintiff’s box did not
25 belong to him, but to another inmate with the same name. Two days later C/O Ruiz, along with
26 Plaintiff, sorted out the property. Plaintiff alleges that he was still missing items and did not get
27 reimbursed for them.

1 **III. Conclusion and Order**

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

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

13 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
14 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
15 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
16 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
17 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
18 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
19 Forsyth, 114 F.3d at 1474.

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

- 21 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a
22 claim;
- 23 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 24 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
25 an amended complaint;
- 26
- 27

- 1 4. Plaintiff may not add any new, unrelated claims to this action via his amended
2 complaint and any attempt to do so will result in an order striking the amended
3 complaint; and
- 4 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
5 action be dismissed, with prejudice, for failure to state a claim.

6
7 IT IS SO ORDERED.

8 Dated: November 7, 2014

9 /s/ Gary S. Austin

10 UNITED STATES MAGISTRATE JUDGE