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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER CONDEE,

Plaintiff,

vs.

C/O CASTILLO, et al.,

Defendants

Case No. 1:14 cv 01072 AWI 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 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).

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

12 **II. Plaintiff’s Claims**

13 Plaintiff, an inmate currently in custody at the Los Angeles County Jail, brings this civil
14 rights action against correction officials employed by the California Department of Corrections
15 and Rehabilitation (CDCR) at CSP Corcoran. Plaintiff names as Defendants the following
16 individuals: Correctional Officer (C/O) Castillo; C/O Aronea and Sergeant Garcia. Plaintiff’s
17 statement of claim, in its entirety, follows:

18
19 On several occasions I was subjected to physical harm for failing
20 to provide confidential information to correction staff (see Exhibit
21 A). I was denied food, subjected to assault, pepper spray, I was
22 threatened by C/O Castillo and Sergeant Garcia knew and did
23 nothing to stop the abuse. I am an inmate/patient at EOP level of
24 care.

25 (Comp. ¶ IV.)

26 Here, the Court finds Plaintiff’s allegations to be vague. Plaintiff sets forth generalized
27 allegations regarding the conditions of his confinement, and names 3 individual defendants. To
28 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

1 another of a constitutional right, where that person ‘does an affirmative act, participates in
2 another’s affirmative acts, or omits to perform an act which [that person] is legally required to do
3 that causes the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988
4 (9th Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite
5 causal connection can be established not only by some kind of direct, personal participation in
6 the deprivation, but also by setting in motion a series of acts by others which the actor knows or
7 reasonably should know would cause others to inflict the constitutional injury.’” Id. (quoting
8 Johnson at 743-44). Plaintiff has not specifically charged each defendant with conduct
9 indicating that they knew of and disregarded a serious risk to Plaintiff’s safety, resulting in injury
10 to Plaintiff. Plaintiff may not hold defendants liable simply by alleging that he was subjected to
11 a risk of harm or that he suffered injury. Plaintiff must allege facts indicating that each
12 defendant was aware of a specific harm to Plaintiff, and acted with deliberate indifference to that
13 harm. Plaintiff has failed to do so here. The complaint should therefore be dismissed. Plaintiff
14 will, however, be granted leave to file an amended complaint.

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

21 **III. Conclusion and Order**

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

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

6 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
7 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
8 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
9 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an
10 original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d
11 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
12 Forsyth, 114 F.3d at 1474.

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

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

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25 IT IS SO ORDERED.

26 Dated: February 12, 2015

27 /s/ Gary S. Austin

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UNITED STATES MAGISTRATE JUDGE