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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICARDO VERDUZCO,
Plaintiff,
vs.
CONNIE GIPSON, et al.,
Defendants

Case No. 1:14 cv 01083 AWI GSA PC

ORDER DISMISSING COMPLAINT AND
GRANTING PLAINTIFF LEAVE TO FILE
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE
IN THIRTY DAYS

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).

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).

“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

1 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a
2 short and plain statement of the claim showing that the pleader is entitled to relief” Fed. R.
3 Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the plaintiff’s
4 claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the
5 liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams,
6 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not
7 supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union
8 Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
9 (9th Cir. 1982)).

10 Plaintiff, an inmate in the custody of the California Department of Corrections and
11 Rehabilitation (CDCR) at Corcoran State Prison, bring this civil rights action against defendant
12 CDCR officials employed by the CDCR at Corcoran. Plaintiff brings this as a class action on
13 behalf of other inmates and himself, challenging the conditions of their confinement at Corcoran.
14 None of the other Plaintiffs have signed the complaint.

15 Plaintiff brings this complaint on behalf of himself and a class that he defines as certain
16 other inmates housed at Corcoran. Pro se prisoner plaintiffs may not bring class actions because
17 they are not adequate class representatives able to fairly present and adequately protect the
18 interests of the class. See Fed. R. Civ. P. 23(a); Russell v. United States, 308 F.2d 78, 79 (9th Cir.
19 1962)(holding “a litigant appearing in propria persona has no authority to represent anyone other
20 than himself”).

21 Because Plaintiff brings this as a class action, the complaint should therefore be
22 dismissed. Plaintiff will, however, be granted leave to file an amended complaint that includes
23 allegations only as to Plaintiff. Plaintiff is cautioned that his failure to do so will result in a
24 recommendation that this action be dismissed for his failure to obey a court order.

25 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
26 each named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal
27 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual allegations must
28

1 be [sufficient] to raise a right to relief above the speculative level” Bell Atlantic Corp. v.
2 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

3 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
4 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
5 567 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
6 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an
7 original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d
8 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
9 Forsyth, 114 F.3d at 1474.

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

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

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23 IT IS SO ORDERED.

24 Dated: January 23, 2015

25 /s/ Gary S. Austin

26 UNITED STATES MAGISTRATE JUDGE

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