

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

AARON WALLACE,
Plaintiff,
v.
DONALD SPECTER, et al.,
Defendants.

) Case No.: 1:14-cv-01293-SAB (PC)
)
) ORDER DISMISSING COMPLAINT, WITH
) LEAVE TO AMEND, FOR FAILURE TO STATE
) A COGNIZABLE CLAIM FOR RELIEF
)
) [ECF No. 1]
)
)

Plaintiff Aaron Wallace is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of the United States magistrate judge on September 10, 2014. Local Rule 302.

Plaintiff filed the complaint on August 18, 2014.

I.

SCREENING REQUIREMENT

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 “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

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)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings liberally construed and to have any doubt resolved in their favor, but the pleading standard is now higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive screening, Plaintiff's claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The "sheer possibility that a defendant has acted unlawfully" is not sufficient, and "facts that are 'merely consistent with' a defendant's liability" falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

II.

COMPLAINT ALLEGATIONS

Plaintiff names Donald Spector (Director of California Department of Corrections and Rehabilitation), K. Currie, N. Navarro, D. Devarro, A. Gonzalez, L. Edmonds, C. Love, and Emilio Reynoso as Defendants.

Based on the illegibility of Plaintiff's handwriting and vague nature of the facts presented in the complaint, the Court cannot determine the nature of Plaintiff's claim(s) for relief. The factual allegations of Plaintiff's complaint consist of one paragraph containing incomplete sentences. As far as the Court can decipher, Plaintiff appears to raise allegations relating to medical services provided and/or not provided to him at Corcoran State Prison. To the extent Plaintiff attempts to raise an Eighth Amendment challenge to his medical treatment, the Court will provide the applicable legal standard. In addition, Plaintiff appears to reference interference with his ability to file inmate grievances and/or

1 access to the court. The Court will likewise provide Plaintiff the applicable legal standards for such
2 claims.

3 **III.**

4 **DISCUSSION**

5 **A. Legibility of Complaint**

6 Plaintiff's complaint is largely illegible. Plaintiff is advised that he must submit "clearly
7 legible" pleadings. Local Rule 130(b). Although the complaint may be handwritten, it must be
8 legible. Plaintiff is cautioned that if the Court cannot read his complaint, it cannot order service upon
9 any defendants. In addition, Plaintiff's complaint must contain "a short and plain statement of the
10 claim showing that [Plaintiff] is entitled to relief...." Fed. R. Civ. P. 8(a)(2). "Each allegation must
11 be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Plaintiff will be given an opportunity to file
12 an amended complaint that is legible. The following sections of this order notify Plaintiff of the
13 general legal standards applicable to any future pleading.

14 **B. Exhaustion of Administrative Remedies**

15 By the PLRA, Congress amended 42 U.S.C. §1997e to provide that "[n]o action shall be
16 brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by
17 a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies
18 as are available are exhausted." 42 U.S.C. § 1997e(a). The exhaustion requirement "applies to all
19 inmate suits about prison life, whether they involve general circumstances or particular episodes, and
20 whether they allege excessive force or some other wrong." Porter v. Nussle, 534 U.S. 516, 532
21 (2002).

22 The PLRA exhaustion requirement is not jurisdictional but rather creates an affirmative
23 defense that defendants must plead and prove. Jones, 747 F.3d at 1166. Thus, inmates are not
24 required to specifically plead or demonstrate exhaustion in their complaints. Albino holds that, in
25 general, the defense should be brought as a Rule 56 motion for summary judgment, unless in the rare
26 event that the prisoner's failure to exhaust is clear on the face of the complaint. Albino, 747 F.3d
27 1168-1169, 1171.

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1 **C. Linkage Requirement**

2 Section 1983 imposes two essential proof requirements upon a claimant: (1) that a person
3 acting under color of state law committed the conduct at issue, and (2) that the conduct deprived the
4 claimant of some right, privilege, or immunity protected by the Constitution or laws of the United
5 States.” Leer v. Murphy, 844 F.2d 628, 632-633 (9th Cir. 1988).

6 Under section 1983, Plaintiff must link the named defendants to the participation in the
7 violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-677 (2009); Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th
8 Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed under
9 a theory of *respondeat superior*, and there must exist some causal connection between the conduct of
10 each named defendant and the violation at issue. Iqbal, 556 U.S. at 676-77; Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013); Lacey v. Maricopa County, 693
11 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

12 **D. Deliberate Indifference to Serious Medical Need**

13 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical
14 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference to
15 an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled
16 in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).
17 Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat [his] condition
18 could result in further significant injury or the unnecessary and wanton infliction of pain,” and (2) that
19 “the defendant’s response to the need was deliberately indifferent.” Wilhelm, 680 F.3d at 1122 (citing
20 Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by “(a) a purposeful act
21 or failure to respond to a prisoner’s pain or possible medical need, and (b) harm caused by the
22 indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind
23 is one of subjective recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d
24 at 985 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.
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1 **E. Access to the Court**

2 Inmates have a fundamental constitutional right of access to the courts. Lewis v. Casey, 518
3 U.S. 343, 346 (1996); Silva v. Di Vittorio, 658 F.3d 1090, 1101 (9th Cir. 2011); Phillips v. Hust, 588
4 F.3d 652, 655 (9th Cir. 2009). However, to state a viable claim for relief, Plaintiff must show that he
5 suffered an actual injury, which requires “actual prejudice to contemplated or existing litigation.”
6 Nevada Dep’t of Corr. v. Greene, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing Lewis, 518 U.S. at 348)
7 (internal quotation marks omitted); Christopher v. Harbury, 536 U.S. 403, 415 (2002); Lewis, 518
8 U.S. at 351; Phillips, 588 F.3d at 655.

9 **F. Inmate Appeals Process**

10 “The Fourteenth Amendment’s Due Process Clause protects persons against deprivations of
11 life, liberty, or property; and those who seek to invoke its procedural protection must establish that one
12 of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Plaintiff does not a
13 have protected liberty interest in the processing his appeals, and therefore, he cannot pursue a claim
14 for denial of due process with respect to the handling or resolution of his appeals. Ramirez v. Galaza,
15 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

16 **IV.**

17 **CONCLUSION AND ORDER**

18 For the reasons stated, Plaintiff’s complaint fails to state a claim upon which relief may be
19 granted. Plaintiff is granted the opportunity to file a first amended complaint within thirty (30) days.
20 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this
21 suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607
22 (7th Cir. 2007) (no “buckshot” complaints).

23 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
24 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.
25 Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties
26 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
27 constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as
28 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .

1 . . ." Twombly, 550 U.S. at 555 (citations omitted).

2 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,
3 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
4 "complete in itself without reference to the prior or superseded pleading," Local Rule 220. "All
5 causes of action alleged in an original complaint which are not alleged in an amended complaint are
6 waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.
7 1981)); accord Forsyth, 114 F.3d at 1474.

8 Based on the foregoing, it is HEREBY ORDERED that:

- 9 1. The Clerk's Office shall send Plaintiff an amended civil rights complaint form;
- 10 2. Plaintiff's complaint, filed August 18, 2014, is dismissed for failure to state a claim;
- 11 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
12 amended complaint; and
- 13 4. If Plaintiff fails to file an amended complaint in compliance with this order, this action
14 will be dismissed, with prejudice, for failure to state a claim.

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16 IT IS SO ORDERED.

17 Dated: December 3, 2014



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UNITED STATES MAGISTRATE JUDGE