

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BINH TRAN,

Plaintiff,

VS.

M. JUNIOUS, et al.,

Defendants

Case No. 1:14 cv 01320 GSA PC

ORDER DISMISSING FIRST AMENDED
COMPLAINT AND GRANTING PLAINTIFF
LEAVE TO FILE A SECOND 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 September 8, 2014 (ECF No. 5).

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 This action proceeds on the October 8, 2014, first amended complaint. Plaintiff is an
16 inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at
17 High Desert State Prison in Susanville. In the original complaint, Plaintiff named as Defendants
18 individuals employed by the CDCR at North Kern State Prison. Plaintiff’s allegations stemmed
19 from conduct that occurred while Plaintiff was housed at North Kern. In the first amended
20 complaint, Plaintiff does not include the allegations of the original complaint. The first amended
21 complaint sets forth conclusory allegations regarding inadequate health care and vague
22 references to Plaintiff’s medical condition.

23 Plaintiff also indicates that “venue is appropriate in this court because both court is in fact
24 govern and reside in this district and substantial amount of acts and omissions giving rise to this
25 lawsuit in and did occur in this district. A substantial portion of the events giving rise to the
26 additional claims alleged in this complain arose in High Desert State Prison in Lassen County,
27 California.” Plaintiff contends that venue is proper because Lassen County is in the Eastern
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1 District of California. Plaintiff is advised that any claims arising out of conduct of officials at
2 High Desert State Prison should be brought in a separate action and filed in the Sacramento
3 Division of the Eastern District of California. Any claims regarding conduct at North Kern State
4 Prison should be brought in this action. However, the original complaint in this action no longer
5 controls, as Plaintiff filed the first amended complaint that is now before the Court. Plaintiff is
6 advised that once he files an amended complaint, the Court will no longer consider any
7 allegations in the original complaint. Plaintiff must set forth all of his allegations in any
8 amended complaint.

9 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
10 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
11 that defendant is employed and in what capacity, and explain how that defendant acted under
12 color of state law. Plaintiff should state clearly, in his or her own words, what happened.
13 Plaintiff must describe what each defendant, *by name*, did to violate the particular right described
14 by Plaintiff. Plaintiff has failed to do so here. The Court will therefore grant Plaintiff leave to
15 file a second amended complaint regarding conduct that occurred at North Kern State Prison.

16 **III. Conclusion and Order**

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

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

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

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

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

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21 IT IS SO ORDERED.

22 Dated: January 28, 2015

23 /s/ Gary S. Austin

24 UNITED STATES MAGISTRATE JUDGE

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