

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DONALD LEE LAWRENCE,
Plaintiff,
vs.
J. LOPEZ, et al.,
Defendants.

1:14-cv-01844 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

¹ Plaintiff consented to proceed before a magistrate judge on December 17, 2014 (ECF No 4).

1 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
2 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
3 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
4 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. §
5 1915(e)(2)(B)(ii).

6 **II. Plaintiff's Claims**

7 Plaintiff, an inmate in the custody of the California Department of Corrections and
8 Rehabilitation (CDCR) at Ironwood State Prison, brings this action against defendant
9 correctional officials employed by the CDCR at Kern Valley State Prison, where the events at
10 issue occurred. Plaintiff names as defendants Lieutenant Tange, Sergeant Vega and
11 Correctional Officer (C/O) J. Lopez. Plaintiff claims that Defendants were deliberately
12 indifferent to his safety, resulting in injury to Plaintiff.

13 Plaintiff's statement of claim, in its entirety, follows.

14
15 Fail to secure check & lock up cleaning supply such as brooms,
16 mops etc. Ran out of dayroom while running, left behind his
17 steel flashlight. Negligence our safety was used as a weapon.
18 Directly after the riot they put us back into a hostile environment
with the same attacking latino inmates without my consent.
Which I was housed for 90+ days causing stress, and anxiety
levels to rise due to the fact that I am already under a lot of
personal pressure and stress.

19 (Compl. ¶ IV).

20 **Eighth Amendment**

21 The Eighth Amendment requires prison officials to take reasonable measures to
22 guarantee the safety of inmates, which has been interpreted to include a duty to protect
23 prisoners. Farmer v. Brennan, 511 U.S. 825, 832-33 (1994); Hearns v. Terhune, 413 F.3d
24 1036, 1040 (9th Cir. 2005). A prisoner seeking relief for an Eighth Amendment violation must
25 show that the officials acted with deliberate indifference to the threat of serious harm or injury
26 to an inmate. Gibson v. County of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002). “Deliberate
27 indifference” has both subjective and objective components. A prison official must “be aware
28 of facts from which the inference could be drawn that a substantial risk of serious harm exists

1 and . . . must also draw the inference.” Farmer, 511 U.S. at 837. Liability may follow only if a
2 prison official “knows that inmates face a substantial risk of serious harm and disregards that
3 risk by failing to take reasonable measures to abate it.” Id. at 847.

4 Plaintiff has not alleged facts suggesting deliberate indifference. Plaintiff alleges that
5 “they” subjected him to risk of harm, but fails to charge each individual defendant with
6 particular conduct. Plaintiff must allege facts indicating that each defendant was aware of a
7 specific harm to Plaintiff, and acted with deliberate indifference to that harm. Plaintiff has
8 failed to do so here. The complaint must therefore be dismissed. Plaintiff will, however, be
9 granted leave to file an amended complaint.

10 Plaintiff need not, however, set forth legal arguments in support of his claims. In order
11 to hold an individual defendant liable, Plaintiff must name the individual defendant, describe
12 where that defendant is employed and in what capacity, and explain how that defendant acted
13 under color of state law. Plaintiff should state clearly, in his own words, what happened.
14 Plaintiff must describe what each defendant, *by name*, did to violate the particular right
15 described by Plaintiff.

16 **III. Conclusion**

17 The Court has screened Plaintiff’s complaint and finds that it does not state any claims
18 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the
19 opportunity to file an amended complaint curing the deficiencies identified by the Court in this
20 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he
21 may not change the nature of this suit by adding new, unrelated claims in his amended
22 complaint.

23 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
24 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
26 allegations must be [sufficient] to raise a right to relief above the speculative level . . .” Bell
27 Atlantic v. Twombly, 550 U.S. 544, 554 (2007)(citations omitted).

1 Finally, Plaintiff is advised that an amended complaint supersedes the original
2 complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814
3 F.2d 565, 567 (9th Cir. 1987), and must be “complete and in and of itself without reference to
4 the prior or superseded pleading.” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of
5 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
7 (9th Cir. 1981)).

8 Accordingly, IT IS HEREBY ORDERED that:

9 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a
10 claim;

11 2. The Clerk’s Office shall send to Plaintiff a complaint form;

12 3. Within **thirty** days from the date of service of this order, Plaintiff shall file an
13 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 complaint; and

16 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,
17 with prejudice, for failure to state a claim.

18 IT IS SO ORDERED.

20 Dated: May 16, 2015

21 _____
22 /s/ **Gary S. Austin**

23 UNITED STATES MAGISTRATE JUDGE