

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DONNELL WEBB,

Plaintiff,

VS.

J. LOPEZ, et al.,

## Defendants.

1:14-cv-01846 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 former 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).<sup>1</sup>

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

<sup>1</sup> Plaintiff filed a consent to proceed before a magistrate judge on December 4, 2014 (ECF No 5).

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 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
7 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N.A., 534  
8 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a  
9 short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed.  
10 R.Civ. P. 8(a). “Such a statement must simply give the defendant fair notice of what the  
11 plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512.  
12 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.”  
13 Nietze v. Williams, 490 U.S. 319, 330 n. 9 (1989). “[A] liberal interpretation of a civil rights  
14 complaint may not supply essential elements of the claim that were not initially pled.” Bruns v.  
15 Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9<sup>th</sup> Cir. 1997)(quoting Ivey v. Bd. of Regents,  
16 673 F.2d 266, 268 (9<sup>th</sup> Cir. 1982)).

17 **II. Plaintiff’s Claims**

18 Plaintiff, formerly an inmate in the custody of the California Department of Corrections  
19 and Rehabilitation (CDCR) at Kern Valley State Prison, brings this action against defendant  
20 correctional officials employed by the CDCR at Kern Valley. Plaintiff names as defendants  
21 Lieutenant Vega, Correctional Officer (C/O) Tangen and C/O Lopez.

22 This action proceeds on the first amended complaint, filed in response to an earlier  
23 order severing Plaintiff’s claims from the original multi-plaintiff complaint and directing  
24 Plaintiff to file his own claims. Plaintiff’s statement of claim is that Defendants failed to lock  
25 up cleaning supplies and as a result he was injured. Plaintiff alleges that “directly after the riot,  
26 they put us back into a hostile environment with the same attacking latino inmates without my  
27 consent.” Plaintiff appears to allege facts in addition to those alleged in the original complaint.  
28 Plaintiff is advised that once an amended complaint is filed, that complaint supersedes the

1 original complaint and the Court will not refer to the original complaint in order to make the  
2 amended complaint complete. Plaintiff must set forth all of his allegations in an amended  
3 complaint.

4 Further, Plaintiff fails to charge each individual defendant with specific conduct.  
5 Plaintiff has not linked Defendants to any acts or omissions that violated Plaintiff's federal  
6 rights. Therefore, Plaintiff fails to state claims against them. The first amended complaint  
7 must therefore be dismissed. Plaintiff will, however, be granted leave to file a second amended  
8 complaint. Plaintiff need not, however, set forth legal arguments in support of his claims. In  
9 order to hold an individual defendant liable, Plaintiff must name the individual defendant,  
10 describe where that defendant is employed and in what capacity, and explain how that  
11 defendant acted under color of state law. Plaintiff should state clearly, in his own words, what  
12 happened. Plaintiff must describe what each defendant, *by name*, did to violate the particular  
13 right described by Plaintiff.

14 **III. Conclusion**

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

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

26 Finally, Plaintiff is advised that an amended complaint supersedes the original  
27 complaint, Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9<sup>th</sup> Cir. 1997); King v. Atiyeh, 814  
28 F.2d 565, 567 (9<sup>th</sup> Cir. 1987), and must be "complete and in and of itself without reference to

1 the prior or superseded pleading.” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of  
2 action alleged in an original complaint which are not alleged in an amended complaint are  
3 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814  
4 (9<sup>th</sup> Cir. 1981)).

5 Accordingly, IT IS HEREBY ORDERED that:

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

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

9 3. Within **thirty** days from the date of service of this order, Plaintiff shall file an  
10 amended complaint;

11 4. Plaintiff may not add any new, unrelated claims to this action via his amended  
12 complaint and any attempt to do so will result in an order striking the amended complaint; and

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

15 IT IS SO ORDERED.

16 Dated: May 16, 2015

17 /s/ Gary S. Austin

18 UNITED STATES MAGISTRATE JUDGE