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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID BAILEY,

Plaintiff,

vs.

J. LOPEZ, et al.,

Defendants.

1:14-cv-01854 GSA PC

ORDER DISMISSING FIRST AMENDED
COMPLAINT AND GRANTING
PLAINTIFF LEAVE TO FILE A SECOND
AMENDED COMPLAINT

SECOND 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 filed a consent to proceed before a magistrate judge on December 8, 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 **II. Plaintiff’s Claims**

7 This action proceeds on the December 8, 2014, first amended complaint. Plaintiff, an
8 inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR)
9 at Kern Valley State Prison, brings this action against defendant officials employed by the
10 CDCR at North Kern State Prison, where the event at issue occurred. Plaintiff names as
11 defendants J. Lopez, J. Tangen and M. Vega. Plaintiff’s statement of claim, in its entirety,
12 follows.

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

21 (Compl. ¶ IV.)

22 **Eighth Amendment**

23 The Eighth Amendment imposes a duty on prison officials to protect inmates from
24 violence at the hands of other inmates. Farmer v. Brennan, 511 U.S. 825, 844 (1994). A prison
25 official violates this duty when two requirements are met. Id. at 834. First, objectively viewed,
26 the prison official’s act or omission must cause “a substantial risk of serious harm.” Id.
27 Second, the official must be subjectively aware of that risk and act with “deliberate indifference
28 to inmate health or safety.” Id. at 834, 839-40 (internal quotation marks omitted). In other
words, “the official must both be aware of facts from which the inference could be drawn that a
substantial risk of serious harm exists, and he must also draw the inference.” Id. at 837.

1 Deliberate indifference is “something more than mere negligence: but “something less than acts
2 or omissions for the very purpose of causing harm or with knowledge that harm will result.”

3 Id. at 835. A prison official’s deliberate indifference may be established through an “inference
4 from circumstantial evidence” or “from the very fact that the risk was obvious.” Id. at 842.

5 The Court finds Plaintiff’s allegations to be vague and conclusory. Plaintiff has not
6 alleged facts suggesting deliberate indifference. Plaintiff must allege facts indicating that each
7 defendant was aware of a specific harm to Plaintiff, and acted with deliberate indifference to
8 that harm. Plaintiff has failed to do so here. The complaint must therefore be dismissed.

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

19 Dated: May 27, 2015

20 /s/ Gary S. Austin
21 UNITED STATES MAGISTRATE JUDGE
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