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

JEREMY JONES,)	Case No.: 1:4-cv-02045-LJO-SAB (PC)
)	
Plaintiff,)	
)	ORDER DISMISSING COMPLAINT,
v.)	WITH LEAVE TO AMEND
)	
JIMENEZ, et al.,)	[ECF No. 1]
)	
Defendants.)	
)	
)	

Plaintiff Jeremy Jones is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

**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,

1 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
2 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
3 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
4 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

5 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
6 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
7 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
8 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
9 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
10 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
11 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
12 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
13 U.S. at 678; Moss, 572 F.3d at 969.

14 II.

15 COMPLAINT ALLEGATIONS

16 Plaintiff’s hand-written complaint is somewhat incoherent and at points illegible. Plaintiff
17 names several correctional staff employed at the California Correctional Institution.

18 The Court advises Plaintiff of the following requirements under the Federal Rules of Civil
19 Procedure regarding the general formatting of his complaint. Plaintiff’s complaint must contain “a
20 short and plain statement of the claim showing that [Plaintiff] is entitled to relief.” Fed. R. Civ. P.
21 8(a)(2). “Each allegation must be simple, concise, and direct.” Federal Rule of Civil Procedure
22 8(d)(1). A party must state its claims or defenses in numbered paragraphs, each limited as far as
23 practicable to a single set of circumstances.” Federal Rule of Civil Procedure 10(b). “[E]ach claim
24 founded on a separate transaction or occurrence . . . must be stated in a separate count.” Federal Rule
25 of Civil Procedure 10(b). The function of the complaint is not to list every single fact relating to
26 Plaintiff’s claims

27 Where the factual elements of a cause of action are present, but are scattered throughout the
28 complaint and are not organized into a short, plain statement of the claim, dismissal for failure to

1 satisfy Rule 8 if proper. See McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996) (explaining
2 complaint should set forth who is being sued, for what relief, and on what theory, with enough detail
3 to provide notice to defendants). . If Plaintiff wishes to amend his complaint, he must set forth his
4 claims in a simple, concise, and direct manner in order to meet the requirements of Rule 8.

5 In addition, a basic lawsuit is a single claim against a single defendant. Federal Rule of Civil
6 Procedure 18(a) allows a plaintiff to add multiple claims to the lawsuit when they are against the same
7 defendant. Federal Rule of Civil Procedure 20(a)(2) allows a plaintiff to join multiple defendants to a
8 lawsuit where the right to relief arises out of the same “transaction, occurrence, or series of
9 transactions” and “any question of law or fact common to all defendants will arise in the action.”
10 However, unrelated claims that involve different defendants must be brought in separate lawsuits. See
11 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). This rule is not only intended to avoid confusion
12 that arises out of bloated lawsuits, but also to ensure that prisoners pay the required filing fees for their
13 lawsuits and prevent prisoners from circumventing the three strikes rule under the Prison Litigation
14 Reform Act. 28 U.S.C. § 1915(g).

15 The Court advises Plaintiff that each claim that is raised in his second amended complaint must
16 be permitted by either Rule 18 or Rule 20. Plaintiff may state a single claim against a single
17 defendant. Plaintiff may then add any additional claims to his action that are against the same
18 defendant under Rule 18. Fed. R. Civ. P. 18. Plaintiff may also add any additional claims against
19 other defendants if those claims arise from the same transaction, occurrence, or series of transactions
20 as his original claim. Fed. R. Civ. P. 20(a)(2). Any attempt to join claims that are not permitted by
21 the Federal Rules of Civil Procedure will result in those claims being dismissed as improperly joined.
22 In the paragraphs that follow, the Court will provide Plaintiff with the relevant applicable legal
23 standards that appear to apply to Plaintiff’s potential claims, as best it can decipher from the
24 complaint. Plaintiff should carefully review the standards and amend only those claims that he
25 believes, in good faith, are cognizable.

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III.
DISCUSSION

A. Linkage

Under section 1983, Plaintiff must link the named defendants to the participation in the violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-77 (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 Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed under a theory of *respondeat superior*, and some causal connection between the conduct of each named defendant and the violation at issue must exist. 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 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

In order for Plaintiff to state a cognizable claim against each of the named individuals, he must link him or her to an affirmative act or omission giving rise to the constitutional violation.

B. Exhibits Attached to Complaint

Plaintiff is advised that the submission of evidence, by way of exhibits, is premature at this point in the proceedings as Plaintiff is only required to state a prima facie claim for relief via his factual allegations. Thus, in amending his complaint, Plaintiff need only state concisely the facts upon which he alleges a defendant has violated his constitutional rights. If Plaintiff feels compelled to submit exhibits with an amended complaint, he is advised that such exhibits must be attached to the amended pleading and must be incorporated by reference. Fed. R. Civ. P. 10(c). With regard to exhibits that are properly attached and incorporated, Plaintiff is cautioned that it is the Court's duty to evaluate the factual allegations within a complaint, not to wade through exhibits, to determine whether cognizable claims have been stated.

Further, if Plaintiff attaches exhibits to an amended complaint, each exhibit must be specifically referenced. For example, Plaintiff must state "see Exhibit A" or something similar in order to direct the Court to the specific exhibit Plaintiff is referencing. Further, if the exhibit consists of more than one page, Plaintiff must reference the specific page of the exhibit (i.e. "see Exhibit A, page 3"). Finally, Plaintiff is advised that the Court must assume that Plaintiff's factual allegations are

1 true. Therefore, it is generally unnecessary for Plaintiff to submit exhibits in support of the allegations
2 in a complaint.

3 **C. Deliberate Indifference to Serious Medical Need**

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

17 **D. Americans with Disabilities Act**

18 Title II of the ADA provides that "no qualified individual with a disability shall, by reason of
19 such disability, be excluded from participation in or be denied the benefits of the services, programs,
20 or activities of a public entity, or be subject to discrimination by such entity." 42 U.S.C. § 12132.
21 Title II applies to the services, programs, and activities provided for inmates by jails and prisons.
22 Pennsylvania Dep't of Corr. v. Yeskey, 524 U.S. 206, 208-13 (1998); Simmons v. Navajo Cnty., 609
23 F.3d 1011, 1021-22 (9th Cir. 2010); Pierce v. Cnty. of Orange, 526 F.3d 1190, 1214-15 (9th Cir.
24 2008). "To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a
25 qualified individual with a disability; (2) [he] was excluded from participation in or otherwise
26 discriminated against with regard to a public entity's services, programs, or activities; and (3) such
27 exclusion or discrimination was by reason of [his] disability." Lovell v. Chandler, 303 F.3d 1039,
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1 1052 (9th Cir. 2002); accord Simmons, 609 F.3d at 1021; McGary v. City of Portland, 386 F.3d 1259,
2 1265 (9th Cir. 2004).

3 **D. Retaliation**

4 Prisoners have a First Amendment right to file grievances against prison officials and to be free
5 from retaliation for doing so.” Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012) (citing
6 Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)). Also protected by the First Amendment is the
7 right to pursue civil rights litigation in federal court without retaliation. Silva v. Di Vittorio, 658 F.3d
8 1090, 1104 (9th Cir. 2011). “Within the prison context, a viable claim of First Amendment retaliation
9 entails five basic elements: (1) An assertion that a state actor took some adverse action against an
10 inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the
11 inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a
12 legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

13 **E. Conspiracy**

14 To state a claim for conspiracy under section 1983, Plaintiff must show the existence of an
15 agreement or a meeting of the minds to violate his constitutional rights, and an actual deprivation of
16 those constitutional rights. Avalos v. Baca, 596 F.3d 583, 592 (9th Cir. 2010); Franklin v. Fox, 312
17 F.3d 423, 441 (9th Cir. 2001).

18 **F. Deprivation of Property**

19 Prisoners have a protected interest in their personal property. Hansen v. May, 502 F.2d 728,
20 730 (9th Cir. 1974). However, while an authorized, intentional deprivation of property is actionable
21 under the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532, n.13 (1984) (citing Logan v.
22 Zimmerman Brush Co., 455 U.S. 422, 435-436 (1982)); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir.
23 1985), “[a]n unauthorized intentional deprivation of property by a state employee does not constitute a
24 violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a
25 meaningful postdeprivation remedy for the loss is available,” Hudson, 468 U.S. at 533.

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1 IV.

2 CONCLUSION AND ORDER

3 For the reasons stated, Plaintiff’s complaint does not state a cognizable claim for relief for a
4 violation of his constitutional rights. Plaintiff is granted leave to file an amended complaint within
5 thirty days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the
6 nature of this suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507
7 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

8 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
9 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.
10 Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties
11 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
12 constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as
13 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .
14 . . .” Twombly, 550 U.S. at 555 (citations omitted). The Court finds that 25 pages, excluding
15 exhibits, is sufficient for Plaintiff to identify his claims and set forth specific facts in support of those
16 claims.

17 Finally, an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc.,
18 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
19 Acomplete in itself without reference to the prior or superceded pleading,” Local Rule 220. “All
20 causes of action alleged in an original complaint which are not alleged in an amended complaint are
21 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.
22 1981)); accord Forsyth, 114 F.3d at 1474.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. The Clerk’s Office shall send Plaintiff an amended civil rights complaint form;
25 2. Plaintiff’s complaint, filed December 22, 2014, is dismissed for failure to follow the
26 Federal Rules of Civil Procedure;
27 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
28 amended complaint which shall not exceed twenty-five (25) pages, excluding exhibits; and

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4. If Plaintiff fails to file an amended complaint in compliance with this order, this action will be dismissed, with prejudice, for failure to state a claim.

IT IS SO ORDERED.

Dated: February 27, 2015


UNITED STATES MAGISTRATE JUDGE