

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
8

9 CHARLES ANTHONY WILLIAMS, JR.,
10

11 Plaintiff,

12 v.

13 JANELLE REYNOSO, et al.,
14

Defendants.

CASE NO. 1:15-cv-00785-MJS (PC)

**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

(ECF No. 1)

**AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS**

15 Plaintiff is a prisoner proceeding *pro se* and *in forma pauperis* in this civil rights
16 action brought pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge
17 Jurisdiction. (ECF No. 5.) No other parties have appeared in the action. Plaintiff's
18 complaint (ECF No. 1) is before the court for screening.
19

20 **I. SCREENING REQUIREMENT**

21 The Court is required to screen complaints brought by prisoners seeking relief
22 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
23 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
24 raised claims that are legally "frivolous, malicious," or that fail to state a claim upon which
25 relief may be granted, or that seek monetary relief from a defendant who is immune from
26 such relief. 28 U.S.C. § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion
27 thereof, that may have been paid, the court shall dismiss the case at any time if the court
28

determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

II. PLEADING STANDARD

Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990), quoting 42 U.S.C. § 1983.

Section 1983 is not itself a source of substantive rights, but merely provides a method for vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

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, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim that is plausible on its face.” Id. Facial plausibility demands more than the mere possibility that a defendant committed misconduct and, while factual allegations are accepted as true, legal conclusions are not. Id. at 667-68.

III. PLAINTIFF'S ALLEGATIONS

Plaintiff's essential allegations are summarized as follows:

Plaintiff is currently incarcerated at Corcoran Substance Abuse Treatment Facility.

On April 16, 2015, Defendant Garcia, a correctional officer, acted on the orders of Defendant Curtiss, a correctional lieutenant, and told Plaintiff that his requests to be housed with "an inmate with whom [he was] comfortable" would be denied. When Plaintiff asked Curtiss for an explanation on April 23, Curtiss asserted that Plaintiff was trying to manipulate the housing assignment process in order to be celled with a transgender inmate whom staff believed to be Plaintiff's "girlfriend." Plaintiff alleges that other inmates in his facility are permitted to be housed with whomever they choose, and that Plaintiff will be forced to share a cell with inmates who are "inept or incongruous," or who are uncomfortable with Plaintiff's gender preferences and/or sexual orientation. He alleges that such undesirable placements would have "the potential to create an unsafe living environment within the housing unit." Plaintiff complained about his housing restrictions to Defendant Associate Warden Reynoso and Defendant Correctional Captain Marsh. Plaintiff does not elaborate on the conditions of his current housing placement.

IV. ANALYSIS

Plaintiff does not specify which constitutional standards Defendants' "egregious and ignominious" housing restrictions allegedly violate. Construed liberally, however, his pleading could be characterized as an attempt to allege violations of the Eighth Amendment and the Equal Protection and Due Process clauses of the Fourteenth Amendment.

1 Because Plaintiff does not have a constitutional right to be housed with an inmate
2 of his choice, and because there appears to be a rational basis for his housing
3 restrictions, the Court will dismiss the complaint with leave to amend.

4 **A. Inmates Do Not Have a Right to Housing of Their Choice.**

5 Neither the Eighth nor the Fourteenth Amendment endows prisoners with a right
6 to be housed in a particular part of the prison or with a particular inmate. See Meachum
7 v. Fano, 427 U.S. 215, 224–25 (1976)(no liberty interest in placement in particular
8 facility); Allen v. Figueroa, 56 F.3d 70, at *7 (9th Cir. 1995)(*unpublished disposition*)(no
9 Eighth Amendment or Due Process right to be housed with inmate of one’s choice);
10 Allen v. Purkett, 5 F.3d 1151, 1153 (8th Cir. 1993)(no Due Process right to be housed
11 with compatible inmate); Bjorlin v. Hubbard, No. CIV S-09-1793 2010 WL 457685, *1
12 (E.D.Cal. Feb. 4, 2010)(same).

13 “While the Eighth Amendment requires prison officials to provide prisoners with
14 the basic human needs, including reasonable safety, it does not require that the
15 prisoners be comfortable and provided with every amenity.” Allen, 56 F.3d at *7 (citing
16 Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982)). A housing assignment may be
17 “restrictive and even harsh,” but will not violate the Eighth Amendment unless it “either
18 inflicts unnecessary or wanton pain or is grossly disproportionate to the severity of
19 crimes warranting imprisonment.” Rhodes v. Chapman, 452 U.S. 337, 348-349 (1981)
20 (finding inmates had no constitutional right to be housed in single cells). Only where
21 prison officials knew or should have known that a housing assignment posed an
22 excessive risk to an inmate’s safety will placement with a particular inmate have
23 constitutional implications. Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1050 (9th
24 Cir. 2002); Cotta v. Cty. of Kings, -- F.Supp.3d --, at *7 (E.D. Cal. 2015).

1 The Due Process Clause also fails to protect an inmate's right to housing of his
2 choice. "An inmate's liberty interests are sufficiently extinguished by his conviction" that
3 the state may change his place of confinement without implicating the inmate's due
4 process rights, even where the change results in more disagreeable conditions. Rizzo v.
5 Dawson, 778 F.2d 527, 530 (9th Cir. 1985); Wilson v. Tilton, No. CIV S-07-1192 2009
6 WL 3246430, at *6 (E.D. Cal. Oct. 6, 2009).

8 Here, Plaintiff has no right to a particular housing arrangement, and the refusal to
9 house him with someone with whom he shares interests or proclivities cannot be said to
10 have inflicted unnecessary pain or disproportionate punishment. Nor does Plaintiff claim
11 that his current housing arrangement is unconstitutional. Although Plaintiff observes that
12 housing him with an incompatible cellmate could create an unsafe environment, he does
13 not indicate that his present housing arrangement is actually unsafe or that prison staff
14 have recklessly or knowingly celled him with someone dangerous. Therefore, the Court
15 will dismiss Plaintiff's Eighth Amendment and Due Process claims.

17 **B. Plaintiff's Housing Restrictions Do Not Violate the Equal Protection Clause.**

18 The Equal Protection Clause requires that persons who are similarly situated be
19 treated alike. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). An
20 equal protection claim may be established by showing that the defendant intentionally
21 discriminated against the plaintiff based on the plaintiff's membership in a protected
22 class, Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir.2003), Lee v. City of Los
23 Angeles, 250 F.3d 668, 686 (9th Cir.2001), or that similarly situated individuals were
24 intentionally treated differently without a rational relationship to a legitimate state
25 purpose. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); see also Lazy Y
26 Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir.2008); North Pacifica LLC v. City of
27
28

1 Pacifica, 526 F.3d 478, 486 (9th Cir.2008). Plaintiff alleges that he was intentionally
2 treated differently from inmates not in, or suspected of being in, relationships: he claims
3 all other inmates are allowed to choose their cellmates, while he has been forbidden
4 from doing so. Because the differential treatment is not based on membership in a
5 protected class, rational basis review applies. Village of Willowbrook v. Olech, 528 U.S.
6 at 564.

8 Here, there appears to be a rational basis for the differential treatment. Prisoner
9 classification decisions take into account an “inmate’s needs, interests, and desires,” but
10 are ultimately based on a combination of factors, including the institution’s “security
11 missions and public safety.” Cal. Code Regs. tit. 15, § 3375(a). Numerous criteria,
12 including an inmate’s sexual orientation, may warrant special placement. Cal. Code
13 Regs. tit. 15, § 3375.2(b)(26). Moreover, California law does not look favorably on
14 inmates’ sexual activity, even if it is consensual. See Cal. Code Regs. tit. 15, § 3007
15 (prohibiting inmate engagement in illegal sexual acts); Cal. Penal Code §§ 286(e),
16 288(e) (criminalizing sodomy and oral copulation by anyone “confined in any state
17 prison”); People v. Santibanez, 91 Cal. App. 3d 287, 289 (Cal. Ct. App. 1979)(finding
18 that “prisoners have no cognizable right to sexual privacy in a jail cell”). Thus,
19 Defendants’ refusal to house Plaintiff with a suspected partner appears to be rationally
20 related to the legitimate interest in preventing criminal activity and/or ensuring inmate
21 safety.

22 **V. CONCLUSION & ORDER**

23 Plaintiff’s complaint does not state a claim for relief under the Eighth or
24 Fourteenth Amendments. Nevertheless, the Court will grant Plaintiff one opportunity to
25 file an amended complaint alleging facts that would bring it within the pleading standards
26
27
28

1 outlined above. See Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v.
2 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff amends, he may not change
3 the nature of this suit by adding new, unrelated claims in his amended complaint.
4 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)(no “buckshot” complaint). An
5 amended complaint supersedes the prior complaint. Lacey v. Maricopa County, 693 F.3d
6 896, 927 (9th Cir. 2012), and must be “complete in itself without reference to the prior or
7 superseded pleading.” Local Rule 220.

8
9 Based on the foregoing, it is HEREBY ORDERED that:

- 10 1. Plaintiff's signed first amended complaint (ECF No. 1) is DISMISSED for
11 failure to state a claim upon which relief may be granted;
- 12 2. The Clerk's Office shall send Plaintiff (1) a blank civil rights amended
13 complaint form and (2) a copy of his complaint filed May 22, 2015;
- 14 3. Plaintiff shall file an amended complaint within thirty (30) days from service
15 of this order, and
16
- 17 4. If Plaintiff fails to comply with this order, the Court will recommend that this
18 action be dismissed, without prejudice, for failure to obey a court order.
19

20 IT IS SO ORDERED.
21

22 Dated: June 16, 2015

23 /s/ Michael J. Seng
24 UNITED STATES MAGISTRATE JUDGE
25
26
27
28