

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CEDRIC CHESTER JOHNSON,

Plaintiff,

v.

NORTH KERN STATE PRISON, et al.,

Defendants.

Case No. 1:16-cv-01370-DAD-JLT (PC)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

(Doc. 1)

30-DAY DEADLINE

In this action, Plaintiff alleges that, correctional officers walked out of the dorm and allowed 30-35 Crip gang members in, who beat him and another inmate. Because his allegations fail to specifically link the officers named as defendants to his factual allegations the Complaint is DISMISSED with leave to amend.

A. 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, malicious, fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). If an action is dismissed on one of these three bases, a strike is imposed per 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed

1 as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has
2 not alleged imminent danger of serious physical injury does not qualify to proceed *in forma*
3 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

4 **B. Summary of Plaintiff's Complaint**

5 Plaintiff complains that in November or December of 2015, “the C/O’s walked out of the
6 dorm and allowed” 30-35 Crip gang members to enter, who brutally beat him and another inmate.
7 Though Plaintiff names four correctional officers as defendants -- C/O Speakman, C/O Rocha,
8 C/O Mrs. K, C/O Jones -- he fails to link any of them to his factual allegations and show the role
9 they played in this incident. However, he may be able to correct the deficiencies in his pleading.
10 Thus, he is being given the pleading requirements, the standards for deliberate indifference to his
11 safety, and leave to file a first amended complaint.

12 **C. Pleading Requirements**

13 **1. Federal Rule of Civil Procedure 8(a)**

14 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
15 exceptions," none of which applies to section 1983 actions. *Swierkiewicz v. Sorema N. A.*, 534
16 U.S. 506, 512 (2002); Fed. R. Civ. Pro. 8(a). A complaint must contain "a short and plain
17 statement of the claim showing that the pleader is entitled to relief" Fed. R. Civ. Pro. 8(a).
18 "Such a statement must simply give the defendant fair notice of what the plaintiff's claim is and
19 the grounds upon which it rests." *Swierkiewicz*, 534 U.S. at 512.

20 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
21 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
22 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

23 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
24 plausible on its face.’” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
25 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; see also *Moss v. U.S.*
26 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

27 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,
28 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally

1 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
2 However, "the liberal pleading standard . . . applies only to a plaintiff's factual allegations," *Neitze*
3 *v. Williams*, 490 U.S. 319, 330 n.9 (1989), "a liberal interpretation of a civil rights complaint may
4 not supply essential elements of the claim that were not initially pled," *Bruns v. Nat'l Credit*
5 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,
6 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*
7 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
8 omitted). The "sheer possibility that a defendant has acted unlawfully" is not sufficient, and
9 "facts that are 'merely consistent with' a defendant's liability" fall short of satisfying the
10 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

11 If he chooses to file a first amended complaint, Plaintiff should endeavor to make it as
12 concise as possible. He should merely state which of his constitutional rights he feels were
13 violated by each Defendant and its factual basis.

14 **2. Linkage Requirement**

15 To state a claim under 42 U.S.C. § 1983, there be an actual connection or link between the
16 actions of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See*
17 *Monell v. Department of Social Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362
18 (1976). The Ninth Circuit has held that "[a] person 'subjects' another to the deprivation of a
19 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
20 in another's affirmative acts or omits to perform an act which he is legally required to do that
21 causes the deprivation of which complaint is made." *Johnson v. Duffy*, 588 F.2d 740, 743 (9th
22 Cir. 1978). In order to state a claim for relief under section 1983, Plaintiff must link each named
23 defendant with some affirmative act or omission that demonstrates a violation of Plaintiff's
24 federal rights.

25 Plaintiff must clearly state which Defendant(s) he feels are responsible for each violation
26 of his constitutional rights and their factual basis as his complaint must put each Defendant on
27 notice of Plaintiff's claims against him or her. *See Austin v. Terhune*, 367 F.3d 1167, 1171 (9th
28 Cir. 2004).

1 **3. Eleventh Amendment Immunity**

2 Plaintiff names the North Kern State Prison as a defendant. Plaintiff may not sustain an
3 action against a state prison. The Eleventh Amendment prohibits federal courts from hearing
4 suits brought against a state sovereign. *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d
5 1050, 1053 (9th Cir. 1991); *see also Seminole Tribe of Fla. v. Florida*, 116 S.Ct. 1114, 1122
6 (1996); *Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993);
7 *Austin v. State Indus. Ins. Sys.*, 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh Amendment bars
8 suits against state agencies as well as those where the state itself is named as a defendant. *See*
9 *Natural Resources Defense Council v. California Dep't of Transp.*, 96 F.3d 420, 421 (9th Cir.
10 1996); *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); *Taylor v.*
11 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a
12 state agency entitled to Eleventh Amendment immunity); *Mitchell v. Los Angeles Community*
13 *College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989). “Though its language might suggest otherwise,
14 the Eleventh Amendment has long been construed to extend to suits brought against a state by its
15 own citizens, as well as by citizens of other states.” *Brooks*, 951 F.2d at 1053 (citations omitted).
16 “The Eleventh Amendment’s jurisdictional bar covers suits naming state agencies and
17 departments as defendants, and applies whether the relief is legal or equitable in nature.” *Id.*
18 (citation omitted). Because the North Kern State Prison is a part of the California Department of
19 Corrections, which is a state agency, it is entitled to dismissal based on Eleventh Amendment.

20 **D. Claim for Relief**

21 **1. Eighth Amendment -- Failure to Protect**

22 “The treatment a prisoner receives in prison and the conditions under which he is
23 confined are subject to scrutiny under the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S.
24 825, 832 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 31 (1993)). Prison officials have a duty
25 “to take reasonable measures to guarantee the safety of inmates, which has been interpreted to
26 include a duty to protect prisoners.” *Labatad v. Corrections Corp. of America*, 714 F.3d 1155,
27 1160 (9th Cir. 2013) (citing *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040
28 (9th Cir. 2005)).

1 To establish a violation of this duty, the prisoner must “show that the officials acted with
2 deliberate indifference to threat of serious harm or injury to an inmate.” *Labatad*, at 1160 (citing
3 *Gibson v. County of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002). This involves both objective
4 and subjective components.

5 First, objectively, the alleged deprivation must be “sufficiently serious” and where a
6 failure to prevent harm is alleged, “the inmate must show that he is incarcerated under conditions
7 posing a substantial risk of serious harm.” *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
8 349 (1981). Second, subjectively, the prison official must “know of and disregard an excessive
9 risk to inmate health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th
10 Cir. 1995). A prison official must “be aware of facts from which the inference could be drawn
11 that a substantial risk of serious harm exists, and . . . must also draw the inference.” *Farmer*, 511
12 U.S. at 837. Liability may follow only if a prison official “knows that inmates face a substantial
13 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”
14 *Id.* at 847.

15 Further, the Supreme Court has stated that a remedy for unsafe conditions need not await
16 a tragic event; rather, where a risk/injury has yet to occur, the plaintiff’s burden would be to prove
17 that his future health/safety is unreasonably endangered, “that it is contrary to current standards of
18 decency for anyone to be so exposed against his will, and that prison officials are deliberately
19 indifferent to his plight.” *Helling*, 509 U.S. at 33-35.

20 The question under the Eighth Amendment is whether prison officials, acting with
21 deliberate indifference, exposed a prisoner to a sufficiently substantial “risk of serious damage to
22 his future health” *Farmer*, at 843 (citing *Helling*, 509 U.S. at 35). The Supreme Court has
23 explained that “deliberate indifference entails something more than mere negligence . . . [but]
24 something less than acts or omissions for the very purpose of causing harm or with the knowledge
25 that harm will result.” *Id.*, at 835. The Court defined this “deliberate indifference” standard as
26 equal to “recklessness,” in which “a person disregards a risk of harm of which he is aware.” *Id.*,
27 at 836-37.

28 As previously mentioned, Plaintiff fails to link any of the named defendants to his factual

1 allegations to proceed on a claim under the Eighth Amendment. Upon amendment, Plaintiff's
2 allegations must show the factual basis upon which each named defendant knew that their actions
3 would result in an excessive risk of serious harm to Plaintiff and acted in deliberate indifference
4 thereto.

5 **2. Supervisory Liability**

6 It appears that Plaintiff may have named the Warden of NKSP not because he was
7 involved in the incident, but merely because he holds a supervisory position.

8 Supervisory personnel are generally not liable under section 1983 for the actions of their
9 employees under a theory of *respondeat superior* and, therefore, when a named defendant holds a
10 supervisory position, the causal link between him and the claimed constitutional violation must be
11 specifically alleged. *See Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*,
12 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for relief
13 under section 1983 based on a theory of supervisory liability, Plaintiff must allege some facts that
14 would support a claim that supervisory defendants either: personally participated in the alleged
15 deprivation of constitutional rights; knew of the violations and failed to act to prevent them; or
16 promulgated or "implemented a policy so deficient that the policy 'itself is a repudiation of
17 constitutional rights' and is 'the moving force of the constitutional violation.'" *Hansen v. Black*,
18 885 F.2d 642, 646 (9th Cir. 1989) (internal citations omitted); *Taylor v. List*, 880 F.2d 1040, 1045
19 (9th Cir. 1989). Under section 1983, liability may not be imposed on supervisory personnel for
20 the actions of their employees under a theory of *respondeat superior*. *Iqbal*, 556 U.S. at 677. "In
21 a § 1983 suit or a *Bivens* action - where masters do not answer for the torts of their servants - the
22 term 'supervisory liability' is a misnomer." *Id.* Knowledge and acquiescence of a subordinate's
23 misconduct is insufficient to establish liability; each government official is only liable for his or
24 her own misconduct. *Id.*

25 "[B]are assertions . . . amount[ing] to nothing more than a "formulaic recitation of the
26 elements" of a constitutional discrimination claim,' for the purposes of ruling on a motion to
27 dismiss [and thus also for screening purposes], are not entitled to an assumption of truth." *Moss*,
28 572 F.3d at 969 (quoting *Iqbal*, 556 U.S. at 1951 (quoting *Twombly*, 550 U.S. at 555)). "Such

1 allegations are not to be discounted because they are 'unrealistic or nonsensical,' but rather
2 because they do nothing more than state a legal conclusion – even if that conclusion is cast in the
3 form of a factual allegation." *Id.* Thus, any allegation that supervisory personnel, such as the
4 Warden, is somehow liable solely based on the acts of those under his or her supervision does not
5 state a cognizable claim.

6 **II. CONCLUSION**

7 For the reasons set forth above, Plaintiff's Complaint is dismissed with leave to file a first
8 amended complaint **within 30 days**. If Plaintiff no longer desires to pursue this action, he may
9 file a notice of voluntary dismissal. If Plaintiff needs an extension of time to comply with this
10 order, Plaintiff shall file a motion seeking an extension of time no later than **30 days** from the
11 date of service of this order.

12 Plaintiff must demonstrate in any first amended complaint how the conditions complained
13 of have resulted in a deprivation of Plaintiff's constitutional rights. *See Ellis v. Cassidy*, 625 F.2d
14 227 (9th Cir. 1980). The first amended complaint must allege in specific terms how each named
15 defendant is involved. There can be no liability under section 1983 unless there is some
16 affirmative link or connection between a defendant's actions and the claimed deprivation. *Rizzo*
17 *v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir. 1980); *Johnson v.*
18 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

19 Plaintiff's first amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short and
20 plain statement must "give the defendant fair notice of what the . . . claim is and the grounds upon
21 which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
22 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
23 [sufficient] to raise a right to relief above the speculative level . . ." *Twombly*, 550 U.S. 127, 555
24 (2007) (citations omitted).

25 Plaintiff is further advised that an amended complaint supercedes the original, *Lacey v.*
26 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
27 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
28 pleading," Local Rule 220.

1 The Court provides Plaintiff with opportunity to amend to cure the deficiencies identified
2 by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff
3 may not change the nature of this suit by adding new, unrelated claims in his first amended
4 complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints).

5 Based on the foregoing, the Court **ORDERS**:

- 6 1. Plaintiff's Complaint is dismissed, with leave to amend;
- 7 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 8 3. **Within 30 days** from the date of service of this order, Plaintiff must file a first
9 amended complaint curing the deficiencies identified by the Court in this order or
10 a notice of voluntary dismissal; and
- 11 4. **If Plaintiff fails to comply with this order, this action will be dismissed for**
12 **failure to obey a court order and for failure to state a claim.**

13
14 IT IS SO ORDERED.

15 Dated: April 28, 2017

15 /s/ Jennifer L. Thurston
16 UNITED STATES MAGISTRATE JUDGE