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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 FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND**

(Doc. 14)

21-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. Despite previously being informed of the requirements to link individual officer to each element of his claim, the First Amended Complaint does not do so. Thus, the First Amended Complaint is **DISMISSED** with leave to amend. This is the last opportunity Plaintiff will be given to correct defects in his pleading.

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.

1 § 1915(e)(2)(B)(i)-(iii). If an action is dismissed on one of these three bases, a strike is imposed
2 per 28 U.S.C. § 1915(g). An inmate who has had three or more prior actions or appeals dismissed
3 as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and has
4 not alleged imminent danger of serious physical injury does not qualify to proceed *in forma*
5 *pauperis*. See 28 U.S.C. § 1915(g); *Richey v. Dahne*, 807 F.3d 1201, 1208 (9th Cir. 2015).

6 **B. Summary of Plaintiff's First Amended Complaint**

7 Plaintiff alleges that “in November or December of 2015, the C/O’s M. Jones, Ms.
8 Kennerter, C/O Rocha, C/o Speakman walked out of the dorm and allowed 30-35 Crip gang
9 members to enter, who brutally beat Plaintiff and another inmate.” (Doc. 14, p. 4.) Plaintiff lists
10 five inmates who allegedly witnessed the incident and alleges that the defendants have a duty to
11 protect prisoners from violence at the hands of other prisoners. (*Id.*) The only change in the First
12 Amended Complaint is that Plaintiff has inserted the four defendants’ names into his brief factual
13 allegations. He still has not stated sufficient facts to state a cognizable claim. Plaintiff may be
14 able to correct the deficiencies in his pleading. Thus, he is being given the pleading requirements,
15 the standards for deliberate indifference to his safety and **one last opportunity** to amend his
16 allegations.

17 **C. Pleading Requirements**

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

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

25 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a
26 cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
27 U.S. 662, 678 (2009), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
28 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is

1 plausible on its face.” *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555. Factual
2 allegations are accepted as true, but legal conclusions are not. *Iqbal*. at 678; *see also Moss v. U.S.*
3 *Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009); *Twombly*, 550 U.S. at 556-557.

4 While “plaintiffs [now] face a higher burden of pleadings facts . . . ,” *Al-Kidd v. Ashcroft*,
5 580 F.3d 949, 977 (9th Cir. 2009), the pleadings of pro se prisoners are still construed liberally
6 and are afforded the benefit of any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
7 However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations,” *Neitze*
8 *v. Williams*, 490 U.S. 319, 330 n.9 (1989), “a liberal interpretation of a civil rights complaint may
9 not supply essential elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit*
10 *Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) quoting *Ivey v. Bd. of Regents*, 673 F.2d 266,
11 268 (9th Cir. 1982), and courts are not required to indulge unwarranted inferences, *Doe I v. Wal-*
12 *Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
13 omitted). The “sheer possibility that a defendant has acted unlawfully” is not sufficient, and
14 “facts that are ‘merely consistent with’ a defendant’s liability” fall short of satisfying the
15 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

16 If he chooses to file a second amended complaint, Plaintiff should endeavor to make it as
17 concise as possible, but should state the factual basis for the elements of his claims against each
18 Defendant.

19 **2. Linkage Requirement**

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

1 federal rights.

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

6 3. Eleventh Amendment Immunity

7 Plaintiff persists in naming the North Kern State Prison as a defendant. As stated in the
8 first screening order, Plaintiff may not sustain an action against a state prison. The Eleventh
9 Amendment prohibits federal courts from hearing suits brought against an un-consenting state.
10 *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); *see also*
11 *Seminole Tribe of Fla. v. Florida*, 116 S.Ct. 1114, 1122 (1996); *Puerto Rico Aqueduct Sewer*
12 *Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993); *Austin v. State Indus. Ins. Sys.*, 939 F.2d
13 676, 677 (9th Cir. 1991). The Eleventh Amendment bars suits against state agencies as well.
14 *See Natural Resources Defense Council v. California Dep't of Tranp.*, 96 F.3d 420, 421 (9th Cir.
15 1996); *Brooks v. Sulphur Springs Valley Elec. Co.*, 951 F.2d 1050, 1053 (9th Cir. 1991); *Taylor v.*
16 *List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a
17 state agency entitled to Eleventh Amendment immunity); *Mitchell v. Los Angeles Community*
18 *College Dist.*, 861 F.2d 198, 201 (9th Cir. 1989).

19 "Though its language might suggest otherwise, the Eleventh Amendment has long been
20 construed to extend to suits brought against a state by its own citizens, as well as by citizens of
21 other states." *Brooks*, 951 F.2d at 1053 (citations omitted). "The Eleventh Amendment's
22 jurisdictional bar covers suits naming state agencies and departments as defendants, and applies
23 whether the relief is legal or equitable in nature." *Id.* (citation omitted). Because the North Kern
24 State Prison is a part of the California Department of Corrections, which is a state agency, it is
25 entitled to dismissal based on Eleventh Amendment. Plaintiff cannot pursue North Kern State
26 Prison in this action and should refrain from naming it in the second amended complaint.

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1 **D. Claim for Relief**

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

3 “The treatment a prisoner receives in prison and the conditions under which he is
4 confined are subject to scrutiny under the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S.
5 825, 832 (1994) (citing *Helling v. McKinney*, 509 U.S. 25, 31 (1993)). Prison officials have a duty
6 “to take reasonable measures to guarantee the safety of inmates, which has been interpreted to
7 include a duty to protect prisoners.” *Labatad v. Corrections Corp. of America*, 714 F.3d 1155,
8 1160 (9th Cir. 2013) (citing *Farmer*, 511 U.S. at 832-33; *Hearns v. Terhune*, 413 F.3d 1036, 1040
9 (9th Cir. 2005)).

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

14 First, objectively, the alleged deprivation must be “sufficiently serious” and where a
15 failure to prevent harm is alleged, “the inmate must show that he is incarcerated under conditions
16 posing a substantial risk of serious harm.” *Id.* at 834, quoting *Rhodes v. Chapman*, 452 U.S. 337,
17 349 (1981). Second, subjectively, the prison official must “know of and disregard an excessive
18 risk to inmate health or safety.” *Id.* at 837; *Anderson v. County of Kern*, 45 F.3d 1310, 1313 (9th
19 Cir. 1995). A prison official must “be aware of facts from which the inference could be drawn
20 that a substantial risk of serious harm exists, and . . . must also draw the inference.” *Farmer*, 511
21 U.S. at 837. Liability may follow only if a prison official “knows that inmates face a substantial
22 risk of serious harm and disregards that risk by failing to take reasonable measures to abate it.”
23 *Id.* at 847.

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

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

10 Plaintiff’s allegations fail to show that any of the named defendants knew that
11 circumstances existed such that their leaving the dorm would result in a substantial risk of serious
12 harm to Plaintiff. Simply stating that four officers left and that 30-35 gang members entered the
13 dorm and thereafter beat Plaintiff requires the Court to indulge unwarranted inferences. *Doe I*,
14 572 F.3d at 681. Plaintiff’s allegations amount to nothing more than the “sheer possibility” that
15 the named officers somehow acted unlawfully, which is not sufficient. *Iqbal*, 556 U.S. at 678,
16 129 S. Ct. at 1949; *Moss*, 572 F.3d at 969.

17 **II. CONCLUSION**

18 For the reasons set forth above, Plaintiff’s First Amended Complaint is dismissed with
19 leave to file a second amended complaint **within 21 days**. If Plaintiff no longer desires to pursue
20 this action, he may file a notice of voluntary dismissal. If Plaintiff needs an extension of time to
21 comply with this order, Plaintiff shall file a motion seeking an extension of time no later than **21**
22 **days** from the date of service of this order.

23 Plaintiff must demonstrate in any second amended complaint how the conditions
24 complained of have resulted in a deprivation of Plaintiff’s constitutional rights. *See Ellis v.*
25 *Cassidy*, 625 F.2d 227 (9th Cir. 1980). The second amended complaint must allege in specific
26 terms how each named defendant is involved. There can be no liability under section 1983 unless
27 there is some affirmative link or connection between a defendant’s actions and the claimed
28 deprivation. *Rizzo v. Goode*, 423 U.S. 362 (1976); *May v. Enomoto*, 633 F.2d 164, 167 (9th Cir.

1 1980); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

2 Plaintiff's second amended complaint should be brief. Fed. R. Civ. P. 8(a). Such a short
3 and plain statement must "give the defendant fair notice of what the . . . claim is and the grounds
4 upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) quoting *Conley v.*
5 *Gibson*, 355 U.S. 41, 47 (1957). Although accepted as true, the "[f]actual allegations must be
6 [sufficient] to raise a right to relief above the speculative level" *Twombly*, 550 U.S. 127, 555
7 (2007) (citations omitted).

8 Plaintiff is further advised that an amended complaint supercedes the original, *Lacey v.*
9 *Maricopa County*, Nos. 09-15806, 09-15703, 2012 WL 3711591, at *1 n.1 (9th Cir. Aug. 29,
10 2012) (en banc), and must be "complete in itself without reference to the prior or superceded
11 pleading," Local Rule 220.

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

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

- 18 1. Plaintiff's First Amended Complaint is dismissed, with leave to amend;
- 19 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 20 3. **Within 21 days** from the date of service of this order, Plaintiff must file a second
21 amended complaint curing the deficiencies identified by the Court in this order or a notice of
22 voluntary dismissal; and

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4. **If Plaintiff fails to comply with this order, it will be recommended that this action be dismissed for failure to obey a court order and for failure to state a claim.**

IT IS SO ORDERED.

Dated: **November 1, 2017**

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE