

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JIMMY LEROY WARD,

Plaintiff,

vs.

TIMOTHY M. LOCKWOOD, et al.,

Defendants.

1:16-cv-01721-GSA-PC

**SCREENING ORDER**

**ORDER DISMISSING COMPLAINT FOR  
FAILURE TO STATE A CLAIM, WITH  
LEAVE TO AMEND  
(ECF No. 1.)**

**THIRTY-DAY DEADLINE FOR  
PLAINTIFF TO FILE FIRST AMENDED  
COMPLAINT**

**ORDER FOR CLERK TO SEND  
PLAINTIFF A CIVIL COMPLAINT FORM**

**I. BACKGROUND**

Jimmy Leroy Ward ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On November 14, 2016, 2015, Plaintiff filed the Complaint commencing this action. (ECF No. 1.)

On December 5, 2016, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (ECF No. 5.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of

1 California, the undersigned shall conduct any and all proceedings in the case until such time as  
2 reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

3 Plaintiff's Complaint is now before the court for screening.

## 4 **II. SCREENING REQUIREMENT**

5 The court is required to screen complaints brought by prisoners seeking relief against a  
6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
7 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
8 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or  
9 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
10 § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been  
11 paid, the court shall dismiss the case at any time if the court determines that the action or  
12 appeal fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

## 13 **III. SUMMARY OF COMPLAINT**

14 Plaintiff is presently incarcerated at the California Institution for Men (CIM) in Chino,  
15 California. The events at issue in the Complaint took place at CIM, Mule Creek State Prison  
16 (MCSP) in Ione, California, and the California Substance Abuse Treatment Facility (SATF) in  
17 Coalinga, California, when Plaintiff was housed at each of those facilities in the custody of the  
18 California Department of Corrections and Rehabilitation (CDCR). Plaintiff names as  
19 defendants Timothy M. Lockwood (Chief, Regulation and Policy Management Branch,  
20 CDCR), Correctional Officer (C/O) Greenwall (MCSP), Sergeant Delao (MCSP), Hall  
21 (Correctional Counselor I, CIM), Captain LeMasters (CIM), C/O J. Barrios (SATF), Sergeant  
22 D. Canales (SATF), Captain P. Brightwell (SATF), and three John Doe defendants  
23 (Classification Staff Representatives, CDCR) (collectively, "Defendants").

24 The gravamen of Plaintiff's Complaint is that he was sexually assaulted by another  
25 inmate and Defendants failed to protect him from risk of harm, transferred him to a prison with  
26 known enemies, and issued a Rules Violation Report against him. It appears that Plaintiff was  
27 moved from CIM to MCSP and then to SATF, where he arrived on June 14, 2014. Plaintiff is  
28 now back at CIM.

1 Plaintiff seeks monetary damages, injunctive and declaratory relief, costs of suit, and  
2 attorney's fees.

#### 3 **IV. PLAINTIFF'S CLAIMS**

4 The Civil Rights Act under which this action was filed provides:

5 Every person who, under color of any statute, ordinance, regulation, custom, or  
6 usage, of any State or Territory or the District of Columbia, subjects, or causes  
7 to be subjected, any citizen of the United States or other person within the  
8 jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
secured by the Constitution and laws, shall be liable to the party injured in an  
action at law, suit in equity, or other proper proceeding for redress . . . .

9 42 U.S.C. § 1983.

10 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a  
11 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,  
12 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman  
13 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697  
14 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);  
15 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of  
16 a state law amounts to the deprivation of a state-created interest that reaches beyond that  
17 guaranteed by the federal Constitution, Section 1983 offers no redress.” Crowley, 678 F.3d at  
18 736 (internal citations omitted).

19 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under  
20 color of state law and (2) the defendant deprived him or her of rights secured by the  
21 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.  
22 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing  
23 “under color of state law”). A person deprives another of a constitutional right, “within the  
24 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or  
25 omits to perform an act which he is legally required to do that causes the deprivation of which  
26 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th  
27 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite  
28 causal connection may be established when an official sets in motion a ‘series of acts by others

1 which the actor knows or reasonably should know would cause others to inflict’ constitutional  
2 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of  
3 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”  
4 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City  
5 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

6 **A. Rule 8(a) of the Federal Rules of Civil Procedure**

7 Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
8 exceptions, none of which apply to § 1983 actions. Swierkiewicz v. Sorema, N.A., 534 U.S.  
9 506, 512 (2002). Under federal notice pleading, a complaint is required to contain “a short and  
10 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.  
11 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements  
12 of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v.  
13 Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555  
14 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge  
15 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)  
16 (internal quotation marks and citation omitted). To state a viable claim, Plaintiff must set forth  
17 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
18 face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir.  
19 2009). While factual allegations are accepted as true, legal conclusions are not. Id. The mere  
20 possibility of misconduct falls short of meeting this plausibility standard.

21 The court finds the allegations in Plaintiff’s Complaint to be vague and conclusory. It is  
22 unclear when each of the events happened, and at which facility. Plaintiff must allege with at  
23 least some degree of particularity overt acts which defendants engaged in that support  
24 Plaintiff’s claims. Sherman v. Yakahi, 549 F.2d 1287, 1290 (9th Cir. 1977); also see McHenry  
25 v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996) (a complaint must make clear “who is being sued,  
26 for what relief, and on what theory, with enough detail to guide discovery”). Plaintiff’s  
27 complaint must give each “defendant fair notice of what the plaintiff’s claim is and the grounds  
28 upon which it rests.” Swierkiewicz, 534 U.S. at 512.

1 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that  
2 is plausible on its face,’” allegations that link the actions or omissions of each named defendant  
3 to a violation of his rights, and factual allegations sufficient to raise a right to relief above the  
4 speculative level. Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 570). Plaintiff has not  
5 satisfied these requirements in the Complaint.

6 Because Plaintiff has failed to comply with the requirements of Rule 8(a), the  
7 Complaint shall be dismissed. The court will, however, grant leave to file an amended  
8 complaint. The courts sets forth below the legal standards for the claims it appears Plaintiff  
9 seeks to bring. Plaintiff should review the standards before deciding which claims to bring in  
10 the amended complaint.

11 **B. Allegations of Events at CIM – Lack of Venue**

12 Plaintiff’s claims arise from events occurring at CIM in Chino, California; MCSP in  
13 Ione, California; and SATF in Corcoran, California. Plaintiff’s claims arising out of events at  
14 SATF and MCSP are proper in this Eastern District of California. However, venue for  
15 Plaintiff’s claims arising out of events at CIM is not proper in this district, and those claims  
16 may not be pursued in this action. Plaintiff shall be granted an opportunity to file an amended  
17 complaint, in which he should omit any claims for relief arising out of events occurring at CIM.  
18 See Costlow v. Weeks, 790 F.2d 1486, 1488 (9th Cir. 1986) (court may raise defective venue  
19 sua sponte); see also Davis v. Mason County, 927 F.2d 1473, 1479 (9th Cir. 1991) (courts have  
20 broad discretion regarding severance). If Plaintiff wishes to pursue the claims arising at CIM,  
21 he may file a new action in the Central District of California.

22 **C. Failure to Protect -- Eighth Amendment Claim**

23 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
24 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th  
25 Cir. 2006). Although prison conditions may be restrictive and harsh, prison officials must  
26 provide prisoners with food, clothing, shelter, sanitation, medical care, and personal safety.  
27 Farmer v. Brennan, 511 U.S. 825, 832-33 (1994) (internal citations and quotations omitted).  
28 Prison officials have a duty to take reasonable steps to protect inmates from physical abuse.

1 Farmer, 511 U.S. at 833; Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). The failure  
2 of prison officials to protect inmates from attacks by other inmates may rise to the level of an  
3 Eighth Amendment violation where prison officials know of and disregard a substantial risk of  
4 serious harm to the plaintiff. E.g., Farmer, 511 U.S. at 847; Hearns, 413 F.3d at 1040.

5 To establish a violation of this duty, the prisoner must establish that prison officials  
6 were “deliberately indifferent to a serious threat to the inmate’s safety.” Farmer, 511 U.S. at  
7 834. The question under the Eighth Amendment is whether prison officials, acting with  
8 deliberate indifference, exposed a prisoner to a sufficiently “substantial risk of serious harm” to  
9 his future health. Id. at 843 (citing Helling v. McKinney, 509 U.S. 25, 35 (1993)). The  
10 Supreme Court has explained that “deliberate indifference entails something more than mere  
11 negligence . . . [but] something less than acts or omissions for the very purpose of causing harm  
12 or with the knowledge that harm will result.” Farmer, 511 U.S. at 835. The Court defined this  
13 “deliberate indifference” standard as equal to “recklessness,” in which “a person disregards a  
14 risk of harm of which he is aware.” Id. at 836-37.

15 The deliberate indifference standard involves both an objective and a subjective prong.  
16 First, the alleged deprivation must be, in objective terms, “sufficiently serious.” Id. at 834.  
17 Second, subjectively, the prison official must “know of and disregard an excessive risk to  
18 inmate health or safety.” Id. at 837; Anderson v. County of Kern, 45 F.3d 1310, 1313 (9th Cir.  
19 1995). To prove knowledge of the risk, however, the prisoner may rely on circumstantial  
20 evidence; in fact, the very obviousness of the risk may be sufficient to establish knowledge.  
21 Farmer, 511 U.S. at 842; Wallis v. Baldwin, 70 F.3d 1074, 1077 (9th Cir. 1995).

22 Plaintiff fails to state a claim under the Eighth Amendment against any of the  
23 Defendants for failure to protect him from harm. Plaintiff has not alleged facts showing that  
24 any Defendant knew about a substantial risk of serious harm to Plaintiff and acted  
25 unreasonably, or failed to act, while consciously disregarding the risk. Plaintiff should name  
26 each Defendant and allege acts by each Defendant showing personal participation in the  
27 deprivation of Plaintiff’s rights. It is not sufficient to allege that a Defendant “had reasonable  
28 belief that there was a substantial risk of harm.” Plaintiff must allege *facts* explaining how the

1 Defendant knew about the risk of harm and how the Defendant acted, showing that the  
2 Defendant ignored or knowingly disregarded the risk, causing Plaintiff to be placed in harm's  
3 way. Plaintiff should also describe any injuries resulting from Defendants' failure to protect  
4 him. Plaintiff is advised to set forth his allegations in chronological order, giving dates and  
5 locations of the events and telling what he saw, heard, personally experienced, or otherwise  
6 knew (and how he knew it).

7 **D. Fourteenth Amendment – Due Process**

8 Plaintiff indicates that he has a claim under the Fourteenth Amendment, without further  
9 explanation. Such claim may be based on Plaintiff's allegations that he was wrongfully  
10 charged with a rules violation at the prison.

11 The Due Process Clause protects against the deprivation of liberty without due process  
12 of law. Wilkinson v. Austin, 545 U.S. 209, 221, 125 S.Ct. 2384, 2393 (2005). In order to  
13 invoke the protection of the Due Process Clause, a plaintiff must first establish the existence of  
14 a liberty interest for which the protection is sought. Id. Liberty interests may arise from the  
15 Due Process Clause itself or from state law. Id.

16 Plaintiff alleges he was issued a Rules Violation Report (RVR) for refusing to program  
17 on the general population yard. However, Plaintiff's Complaint does not explain if he was  
18 given a hearing, found guilty, or disciplined for the rules violation. If he was disciplined,  
19 Plaintiff must allege how he was disciplined and whether the disciplinary action was reversed.  
20 Plaintiff has not provided sufficient information for the court to determine if Plaintiff has a  
21 protected liberty interest based on the RVR.

22 The process due in a prison disciplinary proceeding includes written notice, time to  
23 prepare for the hearing, a written statement of decision, allowance of witnesses and  
24 documentary evidence when not unduly hazardous, and aid to the accused where the inmate is  
25 illiterate or the issues presented are legally complex. Wolff v. McDonnell, 418 U.S. 539, 563-  
26 71 (1974). Due process also requires that there be "some evidence" to support the disciplinary  
27 decision. Superintendent v. Hill, 472 U.S. 445, 454, 105 S.Ct. 2768, 86 L.Ed.2d 356 (1985).

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1 The Due Process Clause only requires that prisoners be afforded those procedures mandated by  
2 Wolff and its progeny.

3 Plaintiff also alleges that he was adversely transferred from one prison to another.  
4 Plaintiff is advised that prisoners have no constitutional right to incarceration in a particular  
5 institution. See Meachum v. Fano, 427 U.S. 215, 224, 96 S.Ct. 2532 (1976). Plaintiff has not  
6 alleged facts demonstrating that the transfer established the existence of a protected liberty  
7 interest.

8 Based on the foregoing, Plaintiff fails to state a due process claim against any of the  
9 Defendants.

10 **E. State Law Claims**

11 Plaintiff alleges that defendant Lockwood “fail[ed] to educate CDCR officers,  
12 supervisors and employees under his authority.” (ECF No. 1 at 4.) Failure to train employees  
13 is a state law claim. Plaintiff is informed that violation of state law is not sufficient to state a  
14 claim for relief under § 1983. To state a claim under § 1983, there must be a deprivation of  
15 federal constitutional or statutory rights. See Paul v. Davis, 424 U.S. 693 (1976). Although the  
16 court may exercise supplemental jurisdiction over state law claims, Plaintiff must first have a  
17 cognizable claim for relief under federal law. See 28 U.S.C. § 1367. In this instance, the court  
18 fails to find any cognizable federal claims in the Complaint. Therefore, Plaintiff’s claim for  
19 failure to train fails.

20 **F. Attorney’s Fees**

21 In addition to other relief, Plaintiff requests attorney’s fees. Plaintiff is representing  
22 himself in this action. Because Plaintiff is not represented by an attorney, he is not entitled to  
23 recover attorney’s fees if he prevails. See Friedman v. Arizona, 912 F.2d 328, 333 n.2 (9th Cir.  
24 1990), superseded by statute as state in Warsoldier v. Woodford, 418 F.3d 989 (9th Cir. 2005);  
25 Gonzalez v. Kangas, 814 F.2d 1411, 1412 (9th Cir. 1987); see also Rickley v. Cnty. of Los  
26 Angeles 654 F.3d 950, 954 (9th Cir. 2011) (“The Court accordingly adopted a per se rule,  
27 categorically precluding an award of attorney's fees under § 1988 to a pro se attorney-  
28 plaintiff.”)



1 **V. CONCLUSION AND ORDER**

2 The court finds that Plaintiff's Complaint fails to state any claim upon which relief may  
3 be granted under § 1983. The court will dismiss the Complaint and give Plaintiff leave to file  
4 an amended complaint addressing the issues described above.

5 Under Rule 15(a) of the Federal Rules of Civil Procedure, "[t]he court should freely  
6 give leave to amend when justice so requires." Accordingly, the court will provide Plaintiff an  
7 opportunity to file an amended complaint curing the deficiencies identified above. Lopez v.  
8 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file a First  
9 Amended Complaint within thirty days.

10 The First Amended Complaint must allege facts showing what each named defendant  
11 did that led to the deprivation of Plaintiff's constitutional rights. Fed. R. Civ. P. 8(a); Iqbal,  
12 556 U.S. at 678; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must  
13 demonstrate that each defendant *personally* participated in the deprivation of his rights by their  
14 actions. Id. at 676-77 (emphasis added). Plaintiff must omit from the First Amended  
15 Complaint any claims that arose from events occurring at CIM, because this district lacks  
16 venue over those claims and over the defendants employed at CIM.

17 Plaintiff should note that although he has been given the opportunity to amend, it is not  
18 for the purpose of changing the nature of this suit or adding unrelated claims. George v. Smith,  
19 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot" complaints). In addition, Plaintiff has not  
20 been granted leave to add allegations to the complaint of events occurring after the initiation of  
21 this suit on November 14, 2016.

22 Plaintiff is advised that an amended complaint supercedes the original complaint, Lacey  
23 v. Maricopa County, 693 F.3d. 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete  
24 in itself without reference to the prior or superceded pleading, Local Rule 220. Therefore, in an  
25 amended complaint, as in an original complaint, each claim and the involvement of each  
26 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly  
27 titled "First Amended Complaint," refer to the appropriate case number, and be an original  
28 signed under penalty of perjury.

Based on the foregoing, it is **HEREBY ORDERED** that:

1. Plaintiff's Complaint is dismissed for failure to state a claim, with leave to amend;
2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
3. Plaintiff is granted leave to file a First Amended Complaint curing the deficiencies identified by the court in this order, within **thirty (30) days** from the date of service of this order;
4. Plaintiff shall caption the amended complaint "First Amended Complaint" and refer to the case number 1:16-cv-01721-GSA-PC; and
5. If Plaintiff fails to file a First Amended Complaint within thirty days, this case shall be dismissed for failure to state a claim.

IT IS SO ORDERED.

Dated: **August 26, 2017**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE