

JAMES CRAMBLIT,	)	Case No.: 1:17-cv-00058-SAB (PC)
	)	
Plaintiff,	)	
	)	
v.	)	ORDER DISMISSING FIRST AMENDED
	)	COMPLAINT, WITH LEAVE TO AMEND, FOR
CALIFORNIA DEPARTMENT OF	)	FAILURE TO STATE A COGNIZABLE CLAIM
CORRECTION AND REHABILITATION,	)	FOR RELIEF
et al.,	)	
	)	[ECF No. 14]
Defendants.	)	
	)	
	)	
	)	

Currently before the Court is Plaintiff's first amended complaint, filed January 25, 2017.

## SCREENING REQUIREMENT

1

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, 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 demonstrate that each named defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

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

## II.

### COMPLAINT ALLEGATIONS

Plaintiff names the California Department of Corrections and Rehabilitation, Appeals Examiner, K.J. Allen, Warden, Fisher, and Assignment Lieutenant, Mr. Wainbright, as Defendants.

On June 14, 2016, Plaintiff submitted an 1824 Reasonable Accommodation Request asking for a job assignment in the dining hall in Facility A. Plaintiff is disabled under the Americans with Disabilities Act because he is a developmentally disabled person and housed in an Enhanced Outpatient Program (EOP) for mentally disabled inmates. Plaintiff’s 1824 request was denied because Plaintiff was not medically approved for food handling. The reasonable accommodation panel made the decision on old medical data that was over ten years old. Plaintiff also submitted a CDCR Form 22 to correctional counselor Mr. Davis “to be put on support services, so I can ask for a dining hall

1 assignment. His response was that ‘No EOP inmates have been cleared for dining hall or kitchen  
2 assignments.’” Plaintiff submits that no EOP inmates have been given job assignments in the dining  
3 hall, canteen, or laundry for at least the past two years.

### 4 III.

### 5 DISCUSSION

#### 6 A. Americans with Disabilities Act

7 Title II of the ADA provides that “no qualified individual with a disability shall, by reason of  
8 such disability, be excluded from participation in or be denied the benefits of the services, programs,  
9 or activities of a public entity, or be subject to discrimination by such entity.” 42 U.S.C. § 12132.  
10 Title II applies to the services, programs, and activities provided for inmates by jails and prisons.  
11 Pennsylvania Dep’t of Corr. v. Yeskey, 524 U.S. 206, 208-13 (1998); Simmons v. Navajo Cnty., 609  
12 F.3d 1011, 1021-22 (9th Cir. 2010); Pierce v. Cnty. of Orange, 526 F.3d 1190, 1214-15 (9th Cir.  
13 2008). “To establish a violation of Title II of the ADA, a plaintiff must show that (1) [he] is a  
14 qualified individual with a disability; (2) [he] was excluded from participation in or otherwise  
15 discriminated against with regard to a public entity’s services, programs, or activities; and (3) such  
16 exclusion or discrimination was by reason of [his] disability.” Lovell v. Chandler, 303 F.3d 1039,  
17 1052 (9th Cir. 2002); accord Simmons, 609 F.3d at 1021; McGary v. City of Portland, 386 F.3d 1259,  
18 1265 (9th Cir. 2004); see also Lee v. City of Los Angeles, 250 F.3d 668, 691 (9th Cir. 2001) (“If a  
19 public entity denies an otherwise ‘qualified individual’ ‘meaningful access’ to its ‘services, programs,  
20 or activities’ ‘solely by reason of’ his or her disability, that individual may have an ADA claim against  
21 the public entity.”) “The ADA prohibits discrimination because of disability, not inadequate treatment  
22 for disability.” Simmons v. Navajo Cnty., 609 F.3d at 1022.

23 The ADA authorizes suits by private citizens for money damages against public entities,  
24 United States v. Georgia, 546 U.S. 151, 153 (2006), and state prisons “fall squarely within the  
25 statutory definition of ‘public entity.’” Pennsylvania Dep’t of Corr., 524 U.S. at 210. “To recover  
26 monetary damages under Title II of the ADA ..., a plaintiff must prove intentional discrimination on  
27 the part of the defendant.” Duvall v. County of Kitsap, 260 F.3d 1124, 1138 (9th Cir. 2001). The  
28 standard for intentional discrimination is deliberate indifference, which “requires both knowledge that

1 a harm to a federally protected right is substantially likely, and a failure to act upon that likelihood.”  
2 Id. at 1139.

3 “In suits under Title II of the ADA ... the proper defendant usually is an organization rather  
4 than a natural person.... Thus, as a rule, there is no personal liability under Title II.” Roundtree v.  
5 Adams, No. 1:01-cv-06502-OWW-LJO, 2005 WL 3284405 (E.D. Cal. 1, 2005) (quotations and  
6 citations omitted). Indeed, a plaintiff cannot bring an action under 42 U.S.C. § 1983 against a State  
7 official in his individual capacity to vindicate rights created by Title II of the ADA. Vinson v.  
8 Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002). Thus, an ADA plaintiff may seek injunctive relief  
9 against an individual defendant only if the defendant is sued in his or her official capacity. Miranda B.  
10 v. Kitzhaber, 328 F.3d 1181, 1187-88 (9th Cir. 2003).

11 Plaintiff must name the appropriate entity or state officials in their official capacities, but he  
12 may not name individual prison employees in their personal capacities. Shaughnessy v. Hawaii, No.  
13 09-00569 JMS/BMK, 2010 WL 2573355, at \*8 (D.Haw. Jun. 24, 2010); Anaya v. Campbell, No. CIV  
14 S-07-0029 GEB GGH P, 2009 WL 3763798, at \*5-6 (E.D.Cal. Nov. 9, 2009); Roundtree v. Adams,  
15 No. 1:01-CV-06502 OWW LJO, 2005 WL 3284405, at \*8 (E.D.Cal. Dec. 1, 2005). Individual  
16 liability is precluded under the ADA. Shaughnessy, 2010 WL 2573355, at \*8; Anaya, 2009 WL  
17 3763798, at \*5-6; Roundtree, 2005 WL 3284405, at \*5.

18 The basis of Plaintiff’s ADA claim is the alleged failure to accommodate his disability with  
19 respect to a specific job position at the prison. Plaintiff has not alleged that he has been excluded from  
20 participation in any job at the prison. Rather, it appears that Plaintiff asserts a right to demand a  
21 specific job placement of his choosing. The Court will grant Plaintiff the opportunity to amend the  
22 complaint, if he desires to do so.

#### 23 IV.

#### 24 CONCLUSION AND ORDER

25 For the reasons stated, Plaintiff’s complaint fails to state a claim upon which relief may be  
26 granted. Plaintiff is granted leave to file an amended complaint within thirty (30) days. Noll v.  
27 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by  
28 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.

2007) (no “buckshot” complaints).

Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights. Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . .” Twombly, 550 U.S. at 555 (citations omitted).

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

Based on the foregoing, it is HEREBY ORDERED that:

1. The Clerk’s Office shall send Plaintiff an amended civil rights complaint form;
2. Plaintiff’s first amended complaint, filed January 25, 2017, is dismissed for failure to state a claim;
3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an amended complaint; and
4. If Plaintiff fails to file an amended complaint in compliance with this order, this action will be dismissed for failure to state a claim.

IT IS SO ORDERED.

Dated: **February 21, 2017**



UNITED STATES MAGISTRATE JUDGE