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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MITCHELL DIXON, JR.,
Plaintiff,
v.
A. ALVAREZ, et al.,
Defendants.

CASE NO. 1:17-cv-00316-MJS(PC)

**ORDER DISMISSING CASE FOR FAILURE
TO STATE A CLAIM**

(ECF No. 15)

**CLERK TO CLOSE CASE AND
TERMINATE ALL PENDING DEADLINES**

Plaintiff Mitchell Dixon, Jr., is a county jail inmate proceeding *pro se* and in *forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 5.) No other parties have appeared in this action.

On April 17, 2017, the Court dismissed Plaintiff's first amended complaint for failure to state a claim. (ECF No. 13.) The Court noted that Plaintiff's factual allegations were essentially incomprehensible, but granted Plaintiff leave to file an amended complaint. Plaintiff's second amended complaint is now before the Court. (ECF No. 15.)

1 **I. Screening Requirement**

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

11 **II. Pleading Standard**

12 Section 1983 “provides a cause of action for the deprivation of any rights,
13 privileges, or immunities secured by the Constitution and laws of the United States.”
14 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
15 Section 1983 is not itself a source of substantive rights, but merely provides a method for
16 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
17 (1989).

18 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)
19 that a right secured by the Constitution or laws of the United States was violated and (2)
20 that the alleged violation was committed by a person acting under the color of state law.
21 See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cty., 811 F.2d 1243,
22 1245 (9th Cir. 1987).

23 A complaint must contain “a short and plain statement of the claim showing that
24 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
25 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
26 by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678
27 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
28 forth “sufficient factual matter, accepted as true, to state a claim to relief that is plausible

1 on its face.” Id. Facial plausibility demands more than the mere possibility that a
2 defendant committed misconduct and, while factual allegations are accepted as true,
3 legal conclusions are not. Id. at 677-78.

4 Furthermore, § 1983 has a linkage requirement, that is, in order to state a claim
5 against an official in his personal capacity, a plaintiff must demonstrate that each named
6 defendant *personally* participated in the deprivation of his rights. Ashcroft v. Iqbal, 556
7 U.S. 662, 676-77 (2009); Simmons, 609 F.3d 1011, 1020-21(9th Cir. 2010); Ewing v. City
8 of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934
9 (9th Cir. 2002). Plaintiff may not attribute liability to a group of defendants, but must “set
10 forth specific facts as to each individual defendant’s” deprivation of his rights. Leer v.
11 Murphy, 844 F.2d 628, 634 (9th Cir. 1988); see also Taylor v. List, 880 F.2d 1040, 1045
12 (9th Cir. 1989). Liability may not be imposed on supervisory personnel under the theory
13 of *respondeat superior*, as each defendant is only liable for his or her own misconduct.
14 Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may only be held liable
15 if they “participated in or directed the violations, or knew of the violations and failed to act
16 to prevent them.” Lemire v. Cal. Dept. of Corrections & Rehabilitation, 726 F.3d 1062,
17 1074-75 (9th Cir. 2013) (“A prison official in a supervisory position may be held liable
18 under § 1983 . . . ‘if he or she was personally involved in the constitutional deprivation or
19 a sufficient causal connection exists between the supervisor’s unlawful conduct and the
20 constitutional violation.’”) (quoting Lolli v. Cty. of Orange, 351 F.3d 410, 418 (9th Cir.
21 2003)); Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567
22 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark Cty. Sch. Bd. of Trs., 479 F.3d
23 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).
24 Where a plaintiff alleges a defendant failed to intervene to stop the abuses of subordinate
25 staff, he must allege that the supervisor defendant failed to intervene after being placed
26 on notice of ongoing constitutional violations by subordinate staff. Starr, 652 F.3d at
27 1205-08.

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1 **III. Plaintiff's Allegations**

2 Plaintiff is currently incarcerated at the Fresno County Jail. He sues Sergeant A.
3 Alvarez, Corporal B. Williams, and Officers M. Warner, S. Sanders, S. Pope, and L.
4 Galindo, and Reserve Officers K. Hernandez and C. Tarpley.

5 Plaintiff appears to complain about events surrounding his arrest for an
6 undisclosed offense. Plaintiff does not specify what constitutional violations were
7 committed by whom.

8 **IV. Analysis**

9 As pled, Plaintiff's complaint claims no unconstitutional acts or omissions by any
10 Defendant. Plaintiff's case will therefore be dismissed for non-compliance with Federal
11 Rule of Civil Procedure 8(a) ("A pleading that states a claim for relief must contain . . . a
12 short and plain statement of the claim showing the pleader is entitled to relief [and] a
13 demand for the relief sought.") The case will be dismissed without prejudice in the hopes
14 Plaintiff may obtain assistance in drafting a coherent pleading after his expected July
15 2017 release from custody. Plaintiff of course must ensure that all applicable time limits
16 and statutes of limitation are complied with.

17 **V. Conclusion**

18 Accordingly, it is HEREBY ORDERED that:

- 19 1. This case is DISMISSED, without prejudice, for failure to state a claim; and
20 2. The Clerk of Court is directed to TERMINATE any and all pending motions
21 and CLOSE this case.

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23 IT IS SO ORDERED.

24 Dated: May 15, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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